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96-7171

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No. 96-_____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

RANDY G. SPENCER,

Petitioner,

v.

MICHAEL L. KEMNA and JEREMIAH W. (JAY) NIXON,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI

INGLISH & MONACO, P.C.

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Supreme Court, U.S.
FILED
DEC 18 1996
OFFICE OF THE CLERK

113 p2

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United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 95-3629

Randy G. Spencer,

Appellant,

v.

Mike Kemna;
Missouri Attorney General,

Appellees.

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Appeal from the United States
District Court for the
Western District of Missouri.

Submitted: May 17, 1996

Filed: August 2, 1996

Before BOWMAN, HEANEY, and WOLLMAN, Circuit Judges.

WOLLMAN, Circuit Judge.

Randy G. Spencer appeals the district court's¹ dismissal of his 28 U.S.C. § 2254 petition as moot. We affirm.

I.

Spencer was convicted in Missouri state court of felony stealing and burglary and was sentenced to concurrent terms of three years' imprisonment. He began serving his sentences on October 17, 1990, and was paroled on April 16, 1992. Spencer's parole was revoked on September 24, 1992, following a revocation hearing before the Missouri Board of Probation and Parole. The Board revoked Spencer's parole based on a violation report alleging that he had committed rape, used cocaine, and used a dangerous

¹The Honorable Elmo B. Hunter, United States District Judge for the Western District of Missouri.

weapon.

Spencer filed this section 2254 petition on April 1, 1993, against Mike Kemna, Superintendent of the Western Missouri Correctional Center, and the Attorney General of Missouri (the State). The petition alleged that: (1) Spencer was denied the right to a preliminary hearing on his parole violations; (2) his conditional release date of October 16, 1992, was suspended without a hearing; (3) his parole revocation hearing violated his due process rights, in that he was denied counsel, he was not allowed to confront adverse witnesses, and the sole evidence against him was the violation report; and (4) he had to wait four months to receive a statement of the reasons why his parole was revoked.

The district court ordered the State to show cause by June 3, 1993, why Spencer's habeas relief should not be granted. The State requested and received two extensions of time until July 7 to file a response. Spencer objected to both motions for extensions of time, stating that the requests for extensions were designed to vex, harass, and infringe upon his substantive rights. The State filed a response to the show cause order on July 7, arguing that Spencer's claims were procedurally barred, or, alternatively, that the claims should be dismissed on their merits.

On July 14, Spencer filed a motion for final disposition of the matter, arguing that because he could be released as early as August 7, he would suffer irreparable harm if his petition was not decided before that date, in that his petition would become moot and he would have no other way to vindicate his rights. Spencer alleged that the State's motive in requesting extensions was to cause his petition to become moot. He also argued the merits of his petition.

Spencer was released on parole on August 7, 1993, and was discharged from parole upon completion of his sentences on October

16. On February 3, 1994, the district court noted Spencer's motion for final disposition and stated that "[t]he resolution of this case will not be delayed beyond the requirements of this Court's docket." On August 23, 1995, the district court dismissed the petition for habeas relief as moot because the sentences had expired.

Spencer argues on appeal that the district court erred in denying his petition as moot because the court's own delays caused the petition to become moot, he will suffer adverse future consequences due to the denial of the petition, and it is in the public interest to address the merits of his petition. Spencer notes that he is currently incarcerated on unrelated charges and that his prior parole revocation will affect his future chances of obtaining parole.

II.

An attack on a criminal conviction is not rendered moot by the fact that the underlying sentence has expired if substantial penalties remain after the satisfaction of the sentence. Carafas v. LaVallee, 391 U.S. 234, 237 (1968). Such penalties include the right to engage in certain businesses, to hold certain offices, to vote in state elections, or to serve as a juror. Id. The court will, in fact, presume that collateral consequences stem from a criminal conviction even after release. See Sibron v. New York, 392 U.S. 40, 57 (1968); Leonard v. Nix, 55 F.3d 370, 373 (8th Cir. 1995). The Supreme Court has held, however, that no similar penalties result from a finding that an individual has violated parole. Lane v. Williams, 455 U.S. 624, 632 (1982).

In Lane, two defendants pleaded guilty to state court prosecutions without being informed that their negotiated sentences included a mandatory parole term. Both were released on parole and reincarcerated for parole violations, and both filed habeas corpus

petitions requesting their release. Both had completed their parole terms by the time the court of appeals entered an order declaring the mandatory parole terms void. Id. at 265-30. The Supreme Court determined that the petitions were moot because the petitioners attacked only their sentences, which had expired; they did not attack, either on substantive or procedural grounds, the finding that they violated the terms of their parole. Id. at 631, 633.

The Court went on to find that, unlike a criminal conviction, no civil disabilities result from a parole violation finding. The Court stated that "[a]t most, certain nonstatutory consequences may occur." Id. at 632. The Court found that the collateral consequence arising from the possible effect of the parole revocation on future parole decisions was "insufficient to bring this case within the doctrine of Carafas." Id. at 632 n.13. Relying on the relevant Illinois law, the Court noted that the existence of a prior parole violation did not render an individual ineligible for parole, but was simply one factor among many considered by the parole board. Id. at 633 n.13.

We have dismissed a habeas corpus appeal challenging a parole revocation for lack of jurisdiction as moot when the movant was again paroled before the case was orally argued. Watts v. Petrovsky, 757 F.2d 964, 965-66 (8th Cir. 1985) (per curiam). We considered as too speculative to overcome mootness the argument that the movant's parole could once again be revoked and the prior parole revocation report used against him. Id. at 966.

Spencer first attempts to distinguish Lane on the ground that, unlike the petitioners in that case, he attacked not only his sentence, but also the underlying basis of his parole violations. This distinction has been used by courts of appeals in other circuits to overcome mootness in the parole revocation context. See United States v. Parker, 952 F.2d 31, 33 (2d Cir. 1991);

Robbins v. Christianson, 904 F.2d 492, 495-96 (9th Cir. 1990). It must be recognized, however, that the Court in Lane went on to hold that the possible collateral consequences in future parole hearings stemming from a finding of parole violation are insufficient to overcome mootness. Lane, 455 U.S. at 632-33 & n.13. This part of the Court's holding Spencer cannot overcome.

Spencer attempts to further distinguish Lane on the ground that it relies on Illinois, rather than Missouri, law. We find this purported distinction unpersuasive. The Illinois regulations relied upon in Lane explicitly provided that the parole board should consider an individual's prior parole violations as a factor in determining whether parole should be granted. Lane, 455 U.S. at 639 (Marshall, J., dissenting). Under Missouri statutes and regulations, the Board does not explicitly rely on a prior parole violation even as one factor in its decision regarding whether to grant parole.² Lane's holding, therefore, is even more applicable

²The Missouri statute concerning parole provides, in relevant part:

When in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or to himself, the board may in its discretion release or parole such person except as otherwise prohibited by law.

Mo. Rev. Stat. § 217.690.1 (1994).

In addition, the statute provides that "[t]he Board shall adopt rules . . . with respect to the eligibility of offenders for parole." Mo. Rev. Stat. § 217.690.3 (1994).

Pursuant to this section, the board has adopted regulations stating that the reasons for its decisions to deny parole include:

1. Release at this time would depreciate the seriousness of the offense committed or promote disrespect for the law;
2. There does not appear to be a reasonable probability at this time that the inmate would live and remain at liberty without violating the law;
3. The inmate has not substantially observed the rules

to a case arising under Missouri law.

Spencer finally attempts to distinguish his case from both Lane and Watts on the ground that the collateral consequences of his parole revocation are not speculative as to him, in that he is once again incarcerated and is facing new parole hearings. Although Spencer's possible collateral consequences are not as speculative as those in Watts, 757 F.2d at 966, we conclude that they remain too speculative to overcome a finding of mootness. Given the Board's wide discretion in releasing a prisoner on parole, we cannot say that the Board will rely on Spencer's previous parole violation in making its decision. Moreover, Spencer placed himself in his present position, in which collateral consequences stemming from his parole revocation become more likely. As noted of the petitioners in Lane, Spencer was "able--and indeed required by law--to prevent such a possibility from occurring." Lane, 455 U.S. at 633 n.13.

III.

Spencer argues that his action should not be dismissed as moot because the important public interest in due process in parole revocation proceedings excepts his case from the mootness doctrine. He argues that because of the important public interest, he need not show that he will be personally affected by the outcome.

To be excepted from the mootness doctrine, the matter must be

-
- of the institution in which confined; and
 4. Release at this time is not in the best interest of society.

Mo. Code Regs. tit. 14, § 80-2.010(9)(A) (1992).

The regulations explicitly state that a parole violator "can be considered for parole at a later time." Mo. Code Regs. tit. 14, § 80-4.030(4) (1992).

"capable of repetition, yet evading review," and there must be "a reasonable expectation that the complaining party would be subjected to the same action again." Lane, 455 U.S. at 633-34 (quoted citations omitted); see also DeFunis v. Odegaard, 416 U.S. 312, 316 (1974) (per curiam) (although state law may save case from mootness based on public interest, federal courts require litigants' rights be affected). Spencer must show a "reasonable likelihood" that he will be affected by the Board's allegedly unconstitutional parole revocation procedures in the future. See Honig v. Doe, 484 U.S. 305, 318 (1988). "[A] mere physical or theoretical possibility" is insufficient to satisfy the test. Murphy v. Hunt, 455 U.S. 478, 482 (1982).

We do not find a reasonable likelihood that Spencer will again be affected by the Board's parole revocation procedures. Assuming that Spencer is paroled from his present incarceration, we will not assume that he will violate his parole terms in order to again undergo revocation proceedings. See Honig, 484 U.S. at 320 (generally unwilling to assume party will repeat misconduct).

The order of dismissal is affirmed.

HEANEY, Circuit Judge, concurring.

I concur in the result reached by the majority only because I agree we are bound by the United States Supreme Court's decision in Lane v. Williams, 455 U.S. 624 (1982). Were I writing on a clean slate, I would reverse the district court because it seems clear that Spencer may suffer collateral consequences as a result of the revocation of his parole.

It is unfortunate that the decision on whether the revocation hearing comported with due process was delayed for so long that the matter became moot by Spencer's release from prison. If nothing else, this case highlights the necessity of making prompt decisions

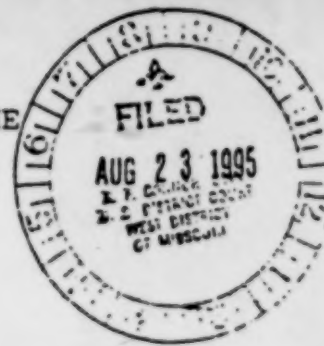
in revocation cases.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



RANDY SPENCER,)	
)	
Petitioner,)	
)	
vs.)	Case No. 93-0299-CV-W-3-P
)	
MIKE KEMNA,)	
)	
Respondent.)	

ORDER DISMISSING CASE

Petitioner brought this case under 28 U.S.C. § 2254 to challenge the revocation of his parole from concurrent sentences for burglary and stealing. The record shows that petitioner was released from incarceration approximately four months after filing this case, and that he completed service of his maximum term approximately two months later. See Doc. No. 13, p. 1, n.1 (State's response). Because the sentences at issue here have expired, petitioner is no longer "in custody" within the meaning of 28 U.S.C. § 2254(a), and his claim for habeas corpus relief is moot.

Accordingly, it is ORDERED that this case is dismissed for the reason stated herein.

E. B. Hunter
E. B. HUNTER
SENIOR DISTRICT JUDGE

Kansas City, Missouri,
Dated: AUG 23 1995

21

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-3629WMKC

Randy G. Spencer,
Appellant,

vs.

Mike Kemna; Missouri Attorney
General,

Appellees.

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•
•
• Order Denying Petition for
• Rehearing and Suggestion
• for Rehearing En Banc
•
•
•

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 19, 1996

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

U.S. District Court
Western District of Missouri (Kansas City)

CIVIL DOCKET FOR CASE #: 93-CV-299

Spencer v. Kemna, et al
Assigned to: Judge Elmo B. Hunter
Referred to: Prisoner Pro Se

Filed: 04/01/93

Demand: \$0,000
Lead Docket: None
Dkt# in other court: None
Nature of Suit: 530
Jurisdiction: Federal Question

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

RANDY G SPENCER
petitioner

Randy G Spencer
509407
[COR LD NTC] [PRO SE]
ACC
Algoa Correctional Center
P.O. Box 538
Jefferson City, MO 65102

v.

MIKE KEMNA
respondent

Ronald L. Jurgeson
[COR LD NTC]
Jackson County Courthouse
415 E. 12th St.
Ste. 200
Kansas City, MO 64106
(816) 881-3355

MO ATTY GENERAL
respondent

Ronald L. Jurgeson
(See above)
[COR LD NTC]

I HEREBY ATTEST AND CERTIFY ON
THAT THE FOREGOING DOCUMENT IS A FULL TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY

R. F. CONNOR
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF MO.

BY Kelvin P. Pinner DEPUTY

TERMED APPEAL
PPOSE

INTERNAL USE ONLY: Proceedings include all events.
4:93cv299 Spencer v. Kemna, et al

TERMED APPEAL
PPOSE

4/1/93 1 PETITION FOR WRIT OF HABEAS CORPUS pursuant to 28 USC 2254
w/req to proceed ifp (PROV. filed pursuant to Court en banc
Order of 12/3/68) Def's Order to pet. w/ ifp forms. NO
INFO COPY. (ce) [Entry date 04/05/93]

4/1/93 -- Notice: Case referred to Pro Se office to Prisoner Pro Se
(ce) [Entry date 04/05/93]

4/5/93 2 DEFECTS ORDER by Judge Elmo B. Hunter P 116 748 846 to
Spencer (cc: all counsel) (ce)

4/8/93 3 AFFIDAVIT of Randy G. Spencer (ce) [Entry date 04/12/93]

4/12/93 4 Mail Returned addressed to Randy G Spencer P 116 748 846
Doc. 2, rec'd 3/6/93 (ce)

4/15/93 -- Receipt# 55333 \$5.00 filing fee of Spencer. (ce)
[Entry date 04/16/93]

5/3/93 5 ORDER TO SHOW CAUSE: by Judge Elmo B. Hunter ;ordered to
show cause by 6/3/93 (cc: all counsel) (ce)
[Entry date 05/05/93]

6/1/93 6 MOTION by petitioner Randy G Spencer to extend time to
file response to Court's Order to Show Cause. (ce)
[Entry date 06/02/93]

6/3/93 7 ORDER by Judge Elmo B. Hunter granting motion to extend
time to file response to Court's Order to Show Cause to
6/23/93. [6-1] (cc: all counsel) (ce) [Entry date 06/04/93]

6/8/93 8 Objections by petitioner Randy G Spencer to resp. mtn
ext. (ce) [Entry date 06/09/93]

6/23/93 9 MOTION by respondent to extend time to answer (ce)
[Entry date 06/24/93]

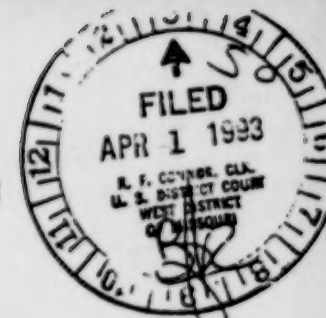
6/23/93 10 ATTORNEY APPEARANCE for respondent : Ronald L. Jurgeson (ce)
[Entry date 06/24/93]

6/30/93 11 Suggestions by petitioner Randy G Spencer in opposition to
motion to extend time to answer [9-1] (ce)
[Entry date 07/01/93]

6/30/93 12 ORDER by Judge Elmo B. Hunter granting motion to extend
time to answer [9-1] 7/7/93 for MO Atty General, for Mike
Kemna (cc: all counsel) (ce) [Entry date 07/06/93]

7/7/93 13 Response by respondent to Order to show cause why a writ
of habeas corpus should not be granted. (ce)
[Entry date 07/09/93]

- 7/13/93 14 ORDER by Judge Elmo B. Hunter That resp. is granted to 7/7/93 to file response to pet's pet. as by the order to show cause. (cc: all counsel) (ce) [Entry date 07/16/93]
- 7/14/93 15 MOTION by petitioner Randy G Spencer for final disposition of this matter (ce) [Entry date 07/16/93]
- 7/15/93 16 ORDER by Judge Elmo B. Hunter (1) pet. file a reply to resp's answer, filed 7/7/93, w/n 30 days from the date of this Order; (2) pet's failure to do so will result in dismissal of this case w/o further notice; and (3) the Clerk send pet. a copy of this Order by reg. and cert. mail, rrr. P 246 793 461 to Spencer. (cc: all counsel) (ce) [Entry date 07/20/93]
- 7/26/93 17 Supplemental by petitioner Randy G Spencer re motion for final disposition of this matter [15-1] (pt)
- 7/27/93 18 Mail Returned of green cert mail card P # 246 793 461, order of 7/15/93 addressed to Randy G Spencer, signed by J Bawman on 7/21/93 (pt) [Edit date 07/27/93]
- 3/13/93 19 NOTICE by petitioner Randy G Spencer of change of address to c/o Robert & Linda Smothers, Lot A-15, Terra Linda Traylor Park, Warrensburg, Mo. 64093 (ce) [Entry date 08/27/93]
- 2/3/94 20 ORDER by Judge Elmo B. Hunter taking under advisement on the motion for final disposition of this matter [15-1] (cc: all counsel) (ce) [Entry date 02/04/94]
- 3/23/95 21 ORDER by Judge Elmo B. Hunter That this case is dismissed, terminating case (cc: all counsel) (ce)
- 3/23/95 22 CLERK'S JUDGMENT Case dismissed for the reasons stated. Entered on: 8/23/95 (cc:All Counsel) (ce)
- 3/25/95 -- MAIL RETURNED: judgment [22-1], order [21-2] returned as undeliverable to Randy G Spencer for petitioner Randy G Spencer (ce)
- 3/5/95 23 NOTICE OF APPEAL by petitioner Randy G Spencer from Dist. Court decision [22-1] Filed 8/23/95 Entered 8/23/95 Paid \$ 0 Rct. # 0 (dw)
- 10/5/95 24 ORDER by Judge Elmo B. Hunter That pet's mtns for leave to proceed on appeal ifp and for a cert. of probable cause are denied. (cc: all counsel) (ce) [Entry date 10/11/95]



IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

93-0299-CV-W-3
PERSONS IN STATE CUSTODY APPLICATION FOR
HABEAS CORPUS UNDER 28 U.S.C. SECTION 2254

Name: Randy G. Spencer
Prison Number: #176948
Place of Confinement: W.E.C.C., R.R. 5., Box 1-E, Cameron, Mo. 64429
United States District Court Western District of Missouri
Case No: _____ (to be supplied by Clerk of the U. S. District Court)
Randy G. Spencer PETITIONER
(Your Full Name) v.
Mike Kemna, Supt., W.M.C.C. RESPONDENT
(Name of Warden, Superintendent, Jailer, or authorized person having custody of petitioner.)
and
THE ATTORNEY GENERAL OF THE STATE OF Missouri ADDITIONAL RESPONDENT.

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, petitioner should file a motion under 28 U.S.C. Section 2255, in the federal court which entered the judgment.)

Instructions - Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as a basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.

- (4) If you do not have the necessary filing fee you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is Office of the Clerk
United States District Court, 811 Grand Ave., Kansas City Mo.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

P E T I T I O N

1. Name and location of court which entered the judgment of conviction under attack: Missouri Dept. of Prob. & Parole,
Jefferson City, Missouri
2. Date of judgment of conviction: September 24, 1992, parole revoked
3. Length of sentence: the remainder of my current sentence
4. Nature of offense involved (all counts): Violation of State Law,
Use of Drugs and Possession of a deadly weapon
5. What was your plea? (Check one)
 - (a) Not Guilty XXXXX
 - (b) Guilty
 - (c) Nolo Contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (Check One) (a) Jury (b) Judge only Parole Bd.
7. Did you testify at the trial? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
 - (a) Name of court: Circuit Court of Dekalb Co., Ga.
 - (b) Result: Petition for writ of Habeas Corpus denied
 - (c) Date of result: January 28, 1993

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, Rule 27.26 motions or other motions with respect to this judgment in any court, state or federal?
- Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court: Mo. Court of Appeals, K.C., Mo.
(2) Nature of proceeding: Writ of Review; request for Writ of Certiorari #47416
(3) Grounds raised: Denied Preliminary Hearing on all alleged parole violations. Mo. mandate Conditional Release Date was taken from me without a hearing. Denied right to a representative of my choice at my revocation hearing, to confront-cross examine witness
(4) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ☐ No ☒
(5) Result: _____
(6) Date of result: _____

(b) As to any second petition, application or motion give the same information:

- (1) Name of court: CONTINUED FROM ABOVE #11
(2) Nature of proceeding: _____
(3) Grounds raised: was not told by parole board at my revocation hearing why there were no live witnesses; no evidence other than the parole violation report, that I denied all allegations of parole violation, that I was revoked at an unfair and bias parole hearing
(4) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ☐ No ☒
(5) Result: Writ of Review; request for Certiorari
(6) Date of result: denied on February 17, 1993

(c) As to any third petition, application or motion, give the same information:

- (1) Name of court: Missouri Supreme Court
(2) Nature of proceeding: Petition for Writ of Habeas Corpus case no. 75570
(3) Grounds raised: same as above except that I included that I was denied my right to a statement and the facts relied upon by the parole board, as to why my parole was revoked.

- (4) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ☐ No ☒

(5) Result: petition for Writ of Habeas Corpus,

(6) Date of result: denied on March 23, 1993

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(3) Third petition, etc. Yes ☒ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search or seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denied my right to a preliminary hearing on all alleged parole violations

Supporting FACTS (tell your story briefly without citing cases or law):

When I was originally violated, my parole officer violated my parole on (2) counts and I waived a hearing on these alleged violations, however, after I was in the Co. Jail a couple of weeks, my parole officer brought me a copy of the violation report and it had a third alleged parole violation on it and I did not sign a waiver on the third

B. Ground two: My Prison Conditional Release Date of Oct. 16, 1992 was taken from me without a hearing

Supporting FACTS (tell your story briefly without citing cases or law):

Under Mo. Law I was to have a conditional release date of October 16, 1992 and although Mo. Law requires a hearing to be conducted before my C.R. date could be taken from me, when I was returned to the Mo. Dept. of Corr. at S.R.D.C., I was labeled a Parole Violator and as a policy and practice, my C.R. date was taken automatically and without a hearing before I was revoked by the parole board

C. Ground three: My entire parole revocation hearing was Constitutionally Flawed and in violation of my due process rights

Supporting FACTS (tell your story briefly without citing cases or law):

I was denied my right to a representative of my choice at my revocation hearing, counsel, to cross examine and to confront any adverse witnesses, I was not told at the hearing why there were no live witnesses, there was no evidence at my hearing but the violation report (hearsay), that I was found guilty of Parole Violation based solely on violation report

D. Ground four: That I was denied my right to a statement of the facts and the evidence relied on for parole revocation

Supporting FACTS (tell your story briefly without citing cases or law):

That I seen the parole board on September 23, 1992 and the policies of the Mo. Dept. of Probation and Parole states that I would be supplied with an answer within (20) days, however, I had to wait four months and then to get an answer on why my parole was violated, I had to file an inmate grievance and then I find out that the parole board violated my parole, based solely on the violation report.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them:

I have not bring this up as I couldn't until now, but the courts that I have been through have not allowed me to rebut or to otherwise answer the respondents answers to my petitions, I file them and then they are denied.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? - Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following states of the judgment attacked herein:

(a) At preliminary hearing No attorney has been appointed or represented me through my entire legal process, on parole violation

(b) At arraignment and plea _____

- (c) At trial _____
- (d) At sentencing _____
- (e) On appeal _____
- (f) In any post-conviction proceeding _____
- (g) On appeal from any adverse ruling in a post-conviction proceeding. _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐ three alleged parole violations

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) And give date and length of sentence to be served in the future:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

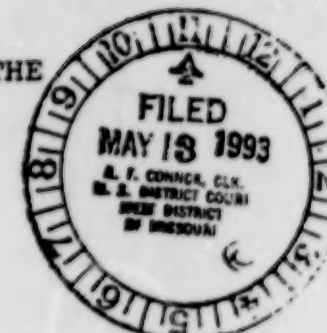
Wherefore, petitioner prays that the Court grant petitioner relief to which petitioner may be entitled in this proceeding.

myself Randy M. Spencer
Signature of attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on March 26 1993
(date)

Randy M. Spencer
Signature of petitioner

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



RANDY G. SPENCER,

Petitioner,

vs.

MIKE KEMNA,

Respondent.

Case No. 93-0299-CV-W-3-P

ORDER DIRECTING RESPONDENT TO FILE AN ANSWER

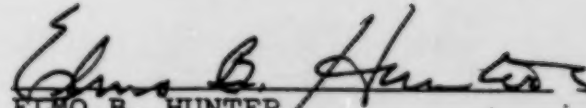
Petitioner, who is incarcerated at the Western Missouri Correctional Center in Cameron, Missouri, has filed pro se this petition for a writ of habeas corpus under 28 U.S.C. § 2254. He has paid the \$5.00 filing fee required by 28 U.S.C. § 1914(a).

Petitioner challenges the revocation of his parole. He lists the following grounds for relief: (1) he was denied the right to a preliminary hearing concerning alleged parole violations; (2) his conditional release date was suspended without a hearing; (3) his parole revocation hearing was constitutionally flawed and did not comport with the principles of due process; and (4) he was denied the opportunity to review the evidence relied on in revoking his parole.

Granting petitioner's claims a liberal construction, see Haines v. Kerner, 404 U.S. 519 (1972), they do not appear to be frivolous or malicious.

Accordingly it is ORDERED that respondent answer the petition

within thirty (30) days from the date of this Order, and show cause why the relief sought should not be granted.


ELMO B. HUNTER
UNITED STATES DISTRICT COURT

Kansas City, Missouri

Dated: 5-3-93.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



RANDY G. SPENCER,
Petitioner,
v.
MIKE KEMNA,
Respondent.

No. 93-0299-CV-W-3-B

MOTION FOR EXTENSION OF TIME

Comes now respondent, by and through counsel, and states as follows in support of his motion for an extension of time in which to file his response to this court's order to show cause why a writ of habeas corpus should not be granted.

1. That respondent's response in the above-styled cause is due on or before June 2, 1993.

2. That counsel has, within the past weeks, filed numerous responses in federal habeas corpus cases, written and filed numerous briefs, and prepared for and made several oral arguments in the various courts in the State of Missouri. Due to this litigation, respondent has been delayed in the completion of his brief in the above-styled cause.

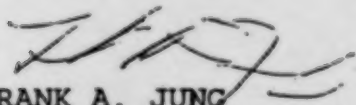
3. That the request for an extension is not designed to vex, harass or infringe in any way upon the substantive rights of appellant.

WHEREFORE, for the reasons herein stated, respondent prays this court grant his motion for an extension of time for twenty-one (21) days, up to and including June 23, 1993.

ORIGINAL

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General


FRANK A. JUNG
Assistant Attorney General

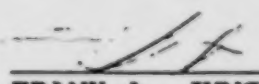
P. O. Box 899
Jefferson City, MO 65102
(314) 751-3321

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true
and correct copy of the
foregoing was mailed, postage
prepaid, this 4 day of
May, 1993, to:

Randy G. Spencer
Reg.No. 176948
W.M.C.C.
Route 5, Box 1-E
Cameron, MO 64429


FRANK A. JUNG

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,

Petitioner,

v.

MIKE KEMNA,

Respondent.

No. 93-0299-CV-W-3-P

ORDER

Upon motion of respondent, and for good cause shown, it is
ORDERED that respondent is granted an extension of time of
twenty-one (21) days, up to and including June 23, 1993, to respond
to this Court's Order to show cause.

UNITED STATES DISTRICT JUDGE

Dated: _____

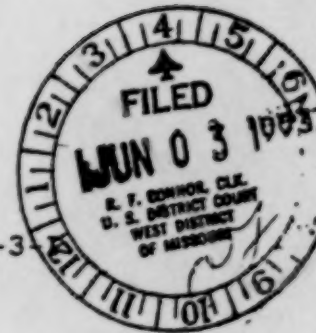
IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,
Petitioner,

v.

MIKE KEMNA,
Respondent.

No. 93-0299-CV-W-3



ORDER

Upon motion of respondent, and for good cause shown, it is ORDERED that respondent is granted an extension of time of twenty-one (21) days, up to and including June 23, 1993, to respond to this Court's Order to show cause.

Elmo B. Hunter
UNITED STATES DISTRICT JUDGE

Dated: 6-3-93

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Document # 7

ORIGINAL

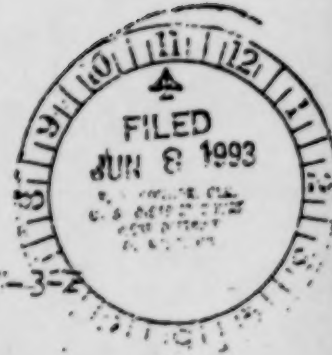
IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,
Petitioner,

-vs-

MIKE KEMNA,
Respondent.

Case No. 93-0299-CV-W-3-2



*Pets objections to nemo not
motion for extension*

Comes now, the petitioner, Randy G. Spencer, a pro-se litigant, and in objection to the respondents request for an extension of time, this petitioner will state as follows:

1. That the respondents motion for an extension of time, in the above entitled cause of action, is a sham plea motion and should be denied.

2. In fact, the respondents very first statement, in paragraph 1, is false information to this court, as the respondents response to this courts show cause order, is not due on or before June 2, 1993 as the respondent has stated, but rather, the respondents response to this courts show cause order is not due until June 13, 1993, a difference of eleven days from the date that the respondent has based his request for an extension of time on, however, when this court considers the respondents request for an extension of time, the "timeliness of motions must be determined by tables in effect when motion was filed". See, Wiley v Shaw, 782 F.2d 1366, appeal after remand, 111 F.2d 100 (10th Cir. 1996).

3. The fact is, this court ordered the respondent to respond to this courts show cause order, within (30) days of the date of said order, date being May 13, 1993, however, the respondents attorney has waited (20) days of this (30) day time limit, before requesting an extension of time and even then, it appears that he only done it because he thought he was out of time.

4. Another fact is, the respondents attorney should have been more responsible and diligent in the delay in the respondents re-

Document # 8 28

depts attorney has presented (2) two, separate and distinct, lies and falsities to this court, and that any further pleadings from the respondent and/or his attorney, should be viewed with great care and skepticism, especially when this court has to adjudicate this petitioners constitutionally flawed parole revocation hearing and this petitioners illegal incarceration, which is being justified by the respondent and his attorney.

THEREFORE, this petitioner prays that this honorable court will deny the respondents motion and request for an extension of time, and, that the respondent will be ordered to respond to this courts show cause order, by the deadline date of said order.

RESPECTFULLY SUBMITTED BY,

Randy G. Spencer
Randy G. Spencer #175948
W.E.C.C./ P.R. B. Box 1-E
Cameron, Missouri-64429

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, by U.S. Mail, postage pre-paid, this 4th day of June, 1993, to:

Frank A. Jung
Assistant Attorney General
P.O. Box 399
Jefferson City, Missouri
65102

Randy G. Spencer
Randy G. Spencer #175948

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



RANDY G. SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

No. 93-0299-CV-W-3-P

RESPONDENT'S MOTION FOR ENLARGEMENT
OF TIME IN WHICH TO FILE RESPONSE


COMES NOW respondent, by and through counsel, Jeremiah W. "Jay" Nixon, Attorney General of the State of Missouri, and Ronald L. Jurgeson, Assistant Attorney General, and states as follows in support of his motion for extension of time in which to respond:

1. That respondent's response in the above-styled cause is currently due on or before June 23, 1993;
2. That counsel has, within the past weeks, filed numerous responses in federal habeas corpus cases, and has written and filed numerous briefs in the Eighth Circuit Court of Appeals and has prepared for and made several oral arguments in the Eighth Circuit. Due to this litigation, respondent has been unable to complete the response in the above-styled case;
3. That this requested extension is not designed to vex or harass petitioner. Petitioner's substantive rights should not be adversely affected.

WHEREFORE, for the reasons stated above, respondent requests an extension of time of fourteen (14) days, up to and including July 7, 1993, in which to respond in the above-styled cause.

Respectfully Submitted,

JEREMIAH W. "JAY" NIXON
Attorney General


RONALD L. JURGESON
Assistant Attorney General
Missouri Bar No. 35431

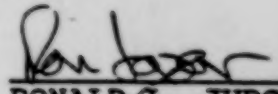
Penntower Office Center
3100 Broadway, Suite 609
Kansas City, Missouri 64111
(816) 889-5000
(816) 889-5006 FAX

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 23rd day of June, 1993, to:

Randy G. Spencer
Reg. No. 176948
Western Missouri Correctional Center
Route 5, Box 1-E
Cameron, Missouri 64429


RONALD L. JURGESON
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

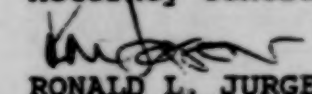
No. 93-0299-CV-W-3-P

ENTRY OF APPEARANCE

COMES NOW Ronald L. Jurgeson, Assistant Missouri Attorney General, and enters his appearance on behalf of respondent.

Respectfully Submitted,

JEREMIAH W. "JAY" NIXON
Attorney General


RONALD L. JURGESON
Assistant Attorney General
Missouri Bar No. 35431

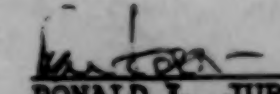
Penntower Office Center
3100 Broadway, Suite 609
Kansas City, Missouri 64111
(816) 889-5000
(816) 889-5006 FAX

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 23rd day of June, 1993, to:

Randy G. Spencer
Reg. No. 176948
Western Missouri Correctional Center
Route 5, Box 1-E
Cameron, Missouri 64429


RONALD L. JURGESON
Assistant Attorney General

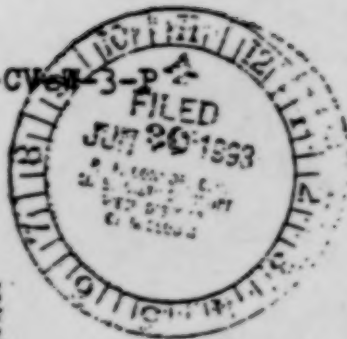


IN THE UNITED STATES DISTRICT COURT OF THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,
Petitioner,
vs.

MIKE KEMNA,
Respondent.

Case No. 93-0299-CV-3-P-A



PETITIONERS' OBJECTION TO THE RESPONDENTS
"SECOND REQUEST" FOR AN EXTENSION OF TIME

Comes now, the petitioner, Randy G. Spencer, pro-se, and in objection to the respondents' second request for an extension of time, this petitioner will state as follows:

1. That on June 2, 1993, a Mr. Frank A. Jung, entered into these pleadings as the respondents attorney.
2. That when Mr. Jung had entered into these proceedings, as the respondents attorney, Mr. Jung had requested an extension of time, up to and including June 23, 1993, a period of (3) weeks, in which to make and file a response for the respondent, to this courts show cause order of May 13, 1993, and, Mr. Jung had made his request for an extension of time, on what he thought was the last possible day in which to do so; June 2, 1993, however, and in reality, Mr. Jung still had eleven (11) days of the original show cause order time, to make and file a response to this courts show cause order and that such a response was not due until June 13, 1993.
3. That when a court considers a motion for an extension of time, it has wide discretion to grant or to deny such a motion, F.R.C.P., rule 6(b), however, requests are usually granted on a showing of good cause, Creedon v Taubman, 8 F.R.D. 268 (D.C.Ohio 1947); and presumably with the understanding, that the time that is to be granted, will be time spent on purposes for which the time was requested.
4. That on June 23, 1993, the day in which Mr. Jung was to have filed a response to this courts show cause order, for the respondent, instead of a response to this courts show cause order being filed, a Mr. Ronald L. Jergeson enters into these pleadings,

case, nor is this court granted such motion, relieving Mr. Jung of his responsibilities, to the respondent or this court.

- H. That without being relieved of their responsibilities, and, without filing a response to this courts show cause order of May 13, 1993, on June 23, 1993, Mr. Jung and the respondent have violated this courts order of June 3, 1993.

6. That on June 23, 1993, when Mr. Ronald L. Jergeson made his appearance, for the respondent and as his attorney, that such an appearance should not and does not satisfy this courts order of June 3, 1993, that a response to this courts show cause order, was due on June 23, 1993, not an entry of appearance, by an attorney.

7. That when Ronald L. Jergeson had made his appearance, and, instead of requesting an extension of time, because this petitioners case had just been transferred to him, and that he was unprepared and unable to file a response to this courts show cause order, or that a response was forthcoming and that an extension of time was needed to finish the response up, from the documents and materials that Mr. Jung had sent him; Mr. Ronald L. Jergeson requested an extension of time, based on the exact same set of reasons and excuses, that Mr. Jung had used.

8. That it appears that Mr. Jergeson has ascertained, that since the reasons and excuses that Mr. Jung had used, had worked, that he too would use them.

9. That a question of "truthfulness" must be drawn, when Mr. Jergeson had used the exact same set of reasons and excuses, that Mr. Jung had used, in making his request for an extension of time, as a request for an extension of time cannot show good cause, if it is based on lies, or uniform application.

10. Further, both of the attorneys in this case, for the respondent, have claimed that their motions for an extension of time, were not designed to vex, harass, or to infringe on this petitioners substantive rights, and, they further state that such a request for an extension of time, is necessary, because of "other litigation," which has caused them to be unable or delayed to file a response to this courts show cause order.

11. That if the respondents request for an extension of time,

where not designed to vex the litigation of this case, and this petitioners substantive rights, then why have both of the attorneys in this case, for the respondent, waited until the day in which the response to the show cause order was due, and then make their appearance and request for an extension of time.

12. The attorneys for the respondent, are not stupid, and they could have or would have known ahead of time, that "other litigation", could possibly cause them to be delayed in their response to this courts show cause order, for the respondent, but instead of the respondents attorneys foreseeing any possibly delays, or making their appearance at the earliest possible moment, and making their request for an extension of time, then, they both waited until the day in which the response to this courts show cause order was due, before making their appearance and requesting an extension of time, denying this petitioner, the opportunity and ability to file a motion of objection to their requests for extensions of time, until after this court has granted their requests.

13. That the respondents requests for an extension of time, are designed to VEX, harass, and to infringe on this petitioners substantive rights.

THEREFORE, this petitioner prays that this court will deny the respondents "second request" for an extension of time, and to require that Mr. Frank A. Jung, make and file a response to this courts show cause order, like he was granted time in which to do so, that this court put a stop to the vexation of this case, by the respondents attorneys, and that if this courts grants the respondents "second request" for an extension of time, that this court make sure that it is the last extension of time, at this point in these proceedings, and, for this court to take what ever other actions, that it deems just and fair.

Respectfully Submitted by,

Randy G. Spencer
RANDY G. SPENCER Petitioner

CERTIFICATE OF SERVICE

I hereby certify, that a copy of the foregoing has been mailed, postage pre-paid, on this 25th day of June, 1993, to:

CONTINUED ON

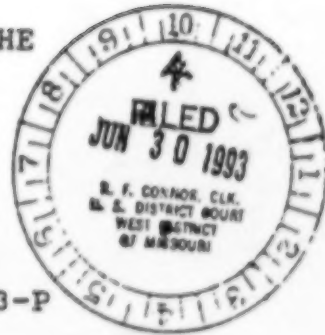
Ronald L. Jerge, Jr., Pentower Office Building, 3100 Broadway,
Suite 609, Kansas City, Missouri-64111- attorney for the respondent.

Randy G. Spencer
RANDY G. SPENCER Petitioner

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

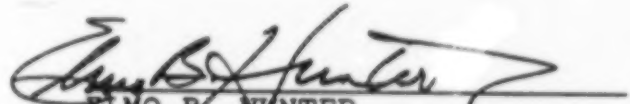
No. 93-0299-CV-W-3-P



ORDER

Upon motion of respondent, and for good cause shown, it is ORDERED that respondent is granted an enlargement of time up to and including July 7, 1993, in which to file a response to the petitioner's petition as directed by this Court's order to show cause.

IT IS SO ORDERED.


ELMO B. HUNTER
UNITED STATES DISTRICT JUDGE

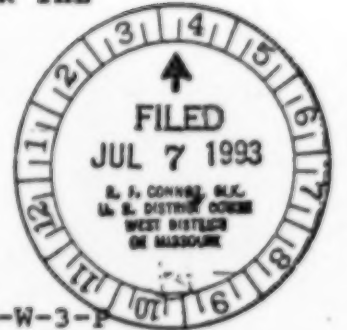
Kansas City, Missouri,

Dated: 6-30-93.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

No. 93-0299-CV-W-3-P



RESPONSE TO ORDER TO SHOW CAUSE WHY A WRIT OF
HABEAS CORPUS SHOULD NOT BE GRANTED

COMES NOW respondent, by and through counsel, and states as follows in response to this Court's order to show cause why a writ of habeas corpus should not be granted.

STATEMENT OF CUSTODY AND PARTIES

Named petitioner, Randy Spencer, is presently incarcerated at the Western Missouri Correctional Center located in Cameron, Missouri, pursuant to the judgment and sentence of the Circuit Court of Jackson County, Missouri. Petitioner was convicted, after a plea of guilty, of burglary in the second degree and stealing over \$150. Petitioner received concurrent terms of three years imprisonment upon his convictions. Petitioner has yet to complete serving his present terms of imprisonment.¹

Mike Kemna, Superintendent of the Western Missouri

¹Records from the Missouri Division of Probation and Parole indicate that petitioner has been scheduled for parole release on August 7, 1993. This presumptive release date is, of course, based upon continued acceptable behavior in the Missouri Department of Corrections until that time. The exhibits also indicate that petitioner will complete the service of his entire term of imprisonment on October 16, 1993 (Resp.Exh.A, p. 1).

Correctional Center, is petitioner's custodian and is a proper party respondent. 28 U.S.C. §2254, Rule 2(a).

STATEMENT OF EXHIBITS

1. Attached hereto are true and correct copies of documents relating to petitioner's parole and subsequent parole revocation regarding his Jackson County charges; said documents are incorporated by reference herein, and identified as Respondent's Exhibit A.

STATEMENT OF ISSUES AND EXHAUSTION

In the present petition, petitioner has presented what he characterizes as four allegations for review by this Court. Paraphrased from petitioner's petition and this Court's order of May 3, 1993, those four allegations are as follows:

- (1) That petitioner was denied the right to a preliminary hearing concerning his parole violation;
- (2) That petitioner's conditional release date was suspended without a hearing;
- (3) That petitioner's parole revocation hearing was constitutionally flawed and did not comport with the principles of due process; and
- (4) That petitioner was denied the opportunity to review the evidence relied on in revoking his parole.

(Pet. at pp. 6-7).

Examination of the petition together with the above-listed exhibits indicates that petitioner, for the purpose of 28 U.S.C. Section 2254, has exhausted his claims because he has either fairly presented the claims to the Missouri state courts or because he is

respondent be allowed an opportunity to discuss the exhaustion or non-exhaustion of those claims.

STATEMENT AS TO MERITS

I.

In his first allegation, petitioner asserts that he was denied his right to a preliminary hearing at the time he was notified of his parole violations (Pet. at p. 6). Petitioner asserts that at the time he was arrested as a parole violator he was informed of two counts forming the basis of the violation warrant (Pet. at p. 6). Petitioner admits that with respect to at least two of the bases for the arrest warrant, he waived a preliminary hearing (Pet. at p. 6). It is only with a third basis for the arrest that petitioner now takes exception. Petitioner asserts that he had not waived a preliminary hearing with respect to the third cause for arrest.

To be sure, the United States Supreme Court has noted the importance of a preliminary hearing at the time of arrest with respect to parole violators. Morrissey v. Brewer, 408 U.S. 471, 484-487, 92 S.Ct. 2593, 2602-2603, 33 L.Ed.2d 484 (1972). In Morrissey, the Supreme Court noted that "due process would seem to require that some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available." Id., at 485, 92 S.Ct. at 2602. With respect to the preliminary hearing, the Court stated the purpose as determining "whether there is probable cause or reasonable ground

to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions." Id.

Here, petitioner's own statement in the petition before this Court would be sufficient to indicate that the purpose of the preliminary hearing was satisfied through acts of petitioner himself. Petitioner's admission as to two bases for the arrest certainly constitutes probable cause for a more detailed parole revocation proceeding. Accordingly, even if petitioner disagreed with the third and final foundation for his arrest, probable cause still existed through acts admitted to by petitioner. On this basis, petitioner's Ground I should be denied.

Additionally, the record developed during petitioner's parole revocation process indicates that petitioner waived a preliminary hearing (Resp.Exh.A, pp. 9, 17). Petitioner has offered no specific evidence to demonstrate that the preliminary hearing was not waived at the time of the arrest and preparation of the original violation report. As petitioner bears the burden of proof in a federal habeas corpus action, his claim under Ground I must be denied.

II.

Next, as his second allegation, petitioner asserts that he has somehow been deprived of a constitutional protection because his conditional release date was taken from him without a hearing (Pet. at p. 6). In the supporting facts relating to this ground, petitioner asserts that he had originally received a conditional release date of October 16, 1992 (Pet. at p. 6). Petitioner then

asserts that Missouri law requires a hearing prior to the extension of a conditional release date (Pet. at p. 6). Petitioner's allegation should be denied for the reasons in petitioner's petition itself.

The issue presented by petitioner in Ground II is only an issue of state law best left for determination by the state courts. Estelle v. McGuire, ___ U.S. ___, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991).

In this case, petitioner received a maximum sentence date of October 16, 1993 (Resp.Exh.A, pp. 1, 4, 6, 9, 11). Petitioner's maximum sentence date ~~was~~ remained unaffected by his parole violation (Resp.Exh.A, pp. 4, 6). As there is no constitutional right to conditional release and as petitioner has not had his maximum sentence date extended based upon his parole violation, there is no basis for Ground II. This ground should be denied.

III-IV.

As his remaining two allegations, petitioner argues that he has been deprived of various rights -- including the right to due process -- during his parole revocation hearing before the Missouri Board of Probation and Parole (Pet. at p. 7). Again, much like petitioner's Ground I, the assertions presented to this Court in Grounds III and IV find their constitutional foundation in the Supreme Court case of Morrissey v. Brewer, supra. In Morrissey, the United States Supreme Court determined that, under the Fourteenth Amendment, a parole violator must be given an opportunity for a revocation hearing prior to the final decision of

that petitioner's parole should be revoked based upon violation of three conditions of parole, conditions number 1, number 6 and number 7 (Resp.Exh.A, p. 6). Remembering that petitioner admitted the use of crack cocaine^d the night of the alleged parole violation, and coupling that with the fact petitioner acknowledged sexual intercourse with the purported victim of the rape, there was no need for the Missouri Board of Probation and Parole to present live witnesses at the revocation hearing. Accordingly, there were no adverse witnesses for petitioner to confront or cross-examine.

A sufficient basis existed for the revocation of petitioner's parole and as petitioner has not been denied due process, there is no merit to his contentions in Ground III or IV.

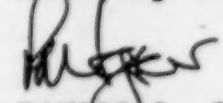
Additionally, in Ground IV, petitioner seems to argue that the Missouri Board of Probation and Parole did not provide answer as to the revocation until approximately four months after the hearing in September of 1992. As demonstrated by the order of revocation (Resp.Exh.A, p. 6), petitioner's parole was ordered revoked on September 24, 1992, the date of the revocation hearing, and only a period of approximately two months after petitioner was originally arrested on the parole violation warrant (see Resp.Exh.A, pp. 17-19). The total time of approximately two months is not unreasonable. Morrissey v. Brewer, 408 U.S. at 488, 92 S.Ct. at 2604.

CONCLUSION

WHEREFORE, for the reasons herein stated, respondent prays that this Court dismiss this petition without further judicial proceedings.

Respectfully submitted,

JEREMIAH W. "JAY" NIXON
Attorney General


RONALD L. JURGESON
Assistant Attorney General
Missouri Bar No. 35431

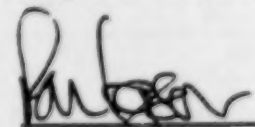
Penntower Office Center
3100 Broadway, Suite 609
Kansas City, MO 64111
(816) 889-5000
(816) 889-5006 FAX

Attorneys for Respondent.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 7th day of July, 1993, to:

Randy G. Spencer
Reg. No. 176948
Western Missouri Correctional Center
Route 5, P.O. Box 1-E
Cameron, MO 64429


RONALD L. JURGESON
Assistant Attorney General

TYPE OF RELEASE: ADMINISTRATIVE

To: District 4 : Type of Investigation : INTERSTATE COMPACT ONLY
: : :
: : :
: Inter-District : We desire to transfer this
: X Supplemental : person to you state
Date: 06/07/93 : Interstate :
: Executive Clemency : As a resident
: Personnel : Family resides your state
Date due: 06/24/93 : Partial PSI : He/She has employment
: Violation Report : With your consent
: : :

Supplemental Information Requested:

— Complete PSI	— Circumstances of Offense	XXX Home
— Court Record	— Other Charges Pending	XXX Employment
— Prior Record	— Social History	Other

Name	Number	DOB	Race/Sex
SPENCER, Randy	PR 176948	03/31/56	W/M

Plea/Crime: PG: Burglary 2nd Degree, PG: Stealing Over \$150

Date Sentenced: 11/08/90 11/08/90 00/00/00
Judge/County: JACK JACK

Length of Sentence	Presumptive Release Date	Supervision/Expiration Date
3 years (3, 3 cc)	08/07/93	10/16/93

Home: City Union Mission 1108 E. 10th Street Kansas City, MO
(816)474-9380

Employment: To be obtained

Comments: Your reply to investigation request must be E-Mailed to the requesting Institutional parole office with a copy to Central Office. The approved home plan address and Presumptive Release Date should be included on the reply.

Subject has the ADMINISTRATIVE release date of 08/07/93.

Special Conditions: No drinking, drug program

Krista Thompson: (WM07) WMCCP#Q9
Western Missouri Correctional Center
Cameron, MO
(816) 632-1390

CC: CO -
MBPP-200 (4-92)

USDCWDMoWD
93-0299-CV-W-3-P
Spencer v. Kemna
Resp.Exh. A

INVESTIGATION REQUEST

Missouri Department of Corrections
Board of Probation & Parole

CHRONOLOGICAL DATA SHEET

NAME: SPENCER, Randy INST. NO.: 176948-W Page 1
SSN: 498-62-6752

Date Dictated: 2-2-93 Date Typed: 02-03-93

PRE-RELEASE REPORT

Randy Spencer has been approved by WMCC for his time credit release date of 8-7-93. Randy Spencer's conduct violations are on the attached time credit eligibility form. He has also received the following conduct violation in addition:

<u>Date</u>	<u>Offense</u>	<u>Disposition</u>
1-4-93	Disobeying an Order	10 days room restriction, 8 hours extra duty

DETAINEES: None

HALFWAY HOUSE: N/A

HOME: City Union Mission
1108 E. 10th Street
Kansas City, MO
816-474-9380

EMPLOYMENT: To be obtained

SPECIAL CONDITIONS: Previous-no drinking and drug program

MEDICAL: None

HOUSE ARREST:

1. _____ Eligible
2. X Not Eligible-Time is too short to Subject's maximum
release date of 10-16-93
3. _____ Eligible, Not Recommended

RECOMMENDATION:

It is recommended that Spencer be administratively paroled on 8-7-93 with special conditions of no drinking and a drug program.

PO: John Baker/ds (WMCC) E-Mailed

STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
TIME CREDIT ELIGIBILITY

Attachment A

8D

INSTITUTION
W M C C

The inmate listed on this form is hereby certified to the Board of Probation & Parole for consideration for Administrative Parole. This certification for release is based upon the inmates conduct and program participation as reflected in the individuals summary.

INMATE NAME

SPENCER, Randy

REGISTER NUMBER

176948

CREDIT RELEASE DATE

08-07-93

FELONY CLASS

C

CONDUCT VIOLATIONS

(Attach additional sheets as needed)

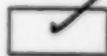
RULE NO.	RULE TITLE	VIOLATION DATE	DISPOSITION
20	Disobeying an Order	01-04-93	10 day rm/cell restrict. 8 hrs. extra duty
24	Contraband	12-01-92	Prop. Imp/Confisc. 8 hrs. extra duty

PROGRAM PARTICIPATION

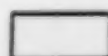
Return Parole Violator 8/25/92.

47

I RECOMMEND



APPROVAL



DENIAL

SUPERINTENDENT SIGNATURE

Mr. [Signature]

Pre-Rel 2-2-93

DATE

1-29-93

(3)



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
BOARD OF PROBATION AND PAROLE
BOARD ACTION SHEET

REVOCATION

TAPE NUMBER

17455

HEARING NUMBER

5

NUMBER

176948

NAME

SPENCER, Randy

HEARING DATE

9-24-92

REVIEW DATE

☐ INITIAL

☐ RECONSIDERATION

☐ INTERIM

☐ PRE-RELEASE

MINIMUM ELIGIBILITY

GUIDELINE DATE

SALIENT FACTOR SCORE

GUIDELINE RANGE

TO

THE BOARD HEREON INSCRIBES ITS FINDINGS AND COMMENTARY AS A MATTER OF PERMANENT RECORD TO BE EXECUTED AS DIRECTED BY THE FOLLOWING ORDER AND DECISION.

☒ REFER TO FULL BOARD

☐ HIGH RISK

RELEASE

☐ PAROLE

☐ CONDITIONAL RELEASE

☐ MAXIMUM RELEASE

DECISION

☐ GUIDELINE

☐ ABOVE GUIDELINE

☐ BELOW GUIDELINE

SPECIAL CONDITIONS

☐ NO DRINKING

☐ DRUG PROGRAM

☐ HALFWAY HOUSE

☐ HOUSE ARREST

☐ DETAINER

☐ MENTAL HEALTH PROGRAM

☐ SEX OFFENDER PROGRAM

VIOLATION

ORDER FOR ARREST 8-13-92

RETURNED 8-25-92

MAX. DATE 10-16-93

NEW MAX. DATE Time remains the same

☐ ABSCONDER

☐ SENTENCE OUTSIDE DAI

DECISION AND REMARKS

revoke - release 10-16-93
R

DECISION AND REMARKS

Condition 1-6-7
Revoke - Release 10-16-93
Viol. Reports
MHC

DECISION AND REMARKS

Revoke / Release 10-16-93
MDX
BPP

DECISION AND REMARKS

Revoke - Release 10-16-93
lan

DECISION AND REMARKS

AGREE
B

48

(4)



Missouri

John Ashcroft, Governor

DEPARTMENT OF CORRECTIONS

Dick D. Moore, Director

Board of Probation and Parole

Cranston J. Mitchell
Chairman & Compact
Administrator

Ben W. Russell
Victoria C. Myers
Betty J. Day
Anthony G. Spillers
Board Members

Paul D. Herman
Chief State Supervisor

Patricia A. Parker
Secretary & Deputy
Compact Administrator

9-14-92

Dear Sir: Randy Spencer 176948

This is to advise that you have been set for a
Revocation Hearing before the Missouri Board of
Probation and Parole on September
24, 1992 9:00 AM in
the Parole Hearing Room at the Fulton Reception and
Diagnostic Center.

It is your responsibility to notify anyone whom you
wish to appear in your behalf at the hearing on that
date.

Sincerely,

MISSOURI BOARD OF PROBATION AND PAROLE

Peggy McClure
Peggy L. McClure
Institutional Parole Officer

PLM/slr

**I have received a copy of this letter.

Subject: Randy SpencerDate 9-14-92

STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
BOARD OF PROBATION AND PAROLE

WAIVER OF REVOCATION HEARING OR REQUEST FOR REVOCATION HEARING

SIGN AND DATE ONLY ONE OF THE FOLLOWING STATEMENTS:

I. WAIVER OF REVOCATION HEARING

I, _____, _____ have been
(NAME) (NUMBER)
returned to the Missouri Division of Adult Institutions for alleged violation of
supervision. I am aware of my rights to a hearing, as stated in Section 217.720.

"The Board shall either order him discharged from such institution or other
detaining custody or shall cause the inmate to be brought before it for a
hearing on the violation charged, under such rules and regulations as the
Board may adopt. If the violation is established and found, the Board may
continue or revoke the parole or conditional release, or enter such other
order as it may see fit. If no violation is established and found, then the
parole or conditional release shall continue."

Having been fully informed, and having full knowledge of these rights in the
aforementioned section, I DO HEREBY WAIVE MY RIGHTS TO A REVOCATION
HEARING BY THE BOARD OF PROBATION AND PAROLE.

NAME	NUMBER	DATE

II. REQUEST FOR REVOCATION HEARING

I, _____, _____ HEREBY
(NAME) (NUMBER)
REQUEST A REVOCATION HEARING before the Board of Probation and Parole,
as provided for in the Statute as cited in Item I, above.

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NAME	NUMBER	DATE
<u>Randy Spencer</u>	<u>176948</u>	<u>9-14-92</u>
DATE RETURNED TO DIVISION OF ADULT INSTITUTION	SIGNATURE WITNESSED BY	DATE
<u>8/25/92</u>	<u>Peggy L. McClure</u>	<u>9-14-92</u>

STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
BOARD OF PROBATION AND PAROLE

REVOCATION REPORT

☒ Parole
☐ Conditional Release

Name: SPENCER, Randy No.: 176948 Date: 9-14-92

DATE INTERVIEWED: 9-14-92
Preliminary Hearing: ☒ Waived ☐ Held ☐ N/A
Client provided with appropriate documents: ☒ Yes ☐ No
MBPP-247 - Request for Attorney: ☐ Offered ☒ Not offered

Offense: PG: Burglary 2nd Degree;
Stealing Over \$150.00
Sentence: 3 years (3,3 cc)
County: Jackson
Date Committed to DAI: 11-14-90
Date Paroled or Conditionally Released: 4-16-92
Order for Arrest and Return: 8-13-92
Date Taken Into Custody: 7-16-92
Date Returned to DAI: 8-25-92
Maximum Release Date: 10-16-93

TYPE OF VIOLATION	OFFICER RECOMMENDATION
<input checked="" type="checkbox"/> (1) New Offense	<input type="checkbox"/> (1) Reinstate
<input type="checkbox"/> (2) Absconder	<input checked="" type="checkbox"/> (2) Revocation
<input checked="" type="checkbox"/> (3) Technical	

I. CONDITIONS AND CIRCUMSTANCES

#1-LAWS: by being arrested on 7-16-92 for Rape.

#6-DRUGS: by having in his possession and using a controlled substance, to wit: Cocaine.

#7-WEAPONS: by having in his possession or using as a dangerous weapon, to wit: screw driver.

Regarding the circumstances pertaining to the above alleged violated conditions, the following information was taken from the Initial Violation Report submitted 7-27-92 completed by District #4 Officer Jonathan Tintinger.

Pertaining to Condition #1-LAWS and #7-WEAPONS: According to the Initial Violation Report submitted, Spencer was arrested on a 20 hour hold on the charge of Rape by the Kansas City Police Department on 7-16-92. According to the offense reports obtained, Spencer was introduced to the victim, Gina Bartlett, in a Kansas City area crack house, located in Kansas City, MO. After smoking Crack Cocaine, the victim was asked by Spencer for

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VIOLATION REPORT

NAME: SPENCER, Randy No.: 176948 Date: 9-14-92 Page: 2

a ride home at approximately 6:00 p.m. The victim then gave Spencer a ride home and agreed to come upstairs, subsequent to his offer to give her gas money. After entering Spencer's apartment, Spencer and the victim smoked more Crack Cocaine, after which the victim attempted to leave the apartment. Spencer then allegedly jumped in front of her, and pushed her to the floor. The victim stated that Spencer got on top of her and started striking her in the face with his fist advising her to shut up. Allegedly, Spencer continued to punch her in the face until she begged him to stop and removed her clothes. Spencer then had sexual intercourse with the victim, removing his penis in time to ejaculate on the victim. Spencer then got dressed and told the victim to get dressed and directed her to drive him back to the drug house in order to purchase more Cocaine. Upon arrival at the drug house, the victim exited the vehicle and informed persons at the drug house that she had just been raped by Spencer. Spencer was chased away from the house by 2 of the male occupants and escaped. The victim was taken to the Independence Regional Hospital and received treatment for the Rape. The attending physician's report at the hospital indicated that the victim was visibility upset, crying at times, and evidenced "bruises on the left side of mouth with moderate swelling, abrasion of inner-upper left lip, tender but not discolored on the right angular jaw." On 6-23-92 the victim identified Spencer as the rapist from a 6 picture color photo spread. Spencer gave a statement to the police officers that the victim's purse was on top of his refrigerator and he attempted to try to get the dope and pushed her away she fell and landed on his bed. When questioned whether or not he had hit the victim in the head with his hands, Spencer replied that he had not done it intentionally, or with his knowledge, however, it may have happened when he pushed her away from the purse. Spencer claimed to the detectives that the 2 had engaged in consensual intercourse. The victim reported that Spencer had a screw driver which he pressed against her side at some point during the alleged rape, but she was not clear at what point that happened. A warrant had not been issued to date of the violation report on this new offense.

Pertaining to Condition #6-DRUGS: As noted in the Initial Violation Report, Spencer allegedly met the victim at a drug house and they both smoked Crack Cocaine.

Regarding Condition #1-LAW and #7-WEAPONS: Spencer denies violating these conditions of parole.

Regarding Condition #6-DRUGS, Spencer admitted to this officer that he had in fact used Cocaine and advised this officer "so what". During the violation interview with this officer, Spencer portrayed a negative attitude and was somewhat verbally aggressive. He intends to have no witnesses at his hearing.

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REVOCATION REPORT

NAME: SPENCER, Randy No.: 176948 Date: 9-14-92 Page 3

II. OTHER VIOLATIONS

None

III. RECOMMENDATION

Spencer appears before the Board on his first violation after being arrested for Suspicion of Rape. It does not appear that a warrant was ever issued for this offense. Spencer does admit to using Crack Cocaine, however, denies violating Conditions #1 and #7. Based upon the information presented in the violation report, there does appear to be significant evidence that Spencer has violated the conditions of his parole as stated. This officer would respectfully recommend to the Board that Spencer's parole supervision be revoked and he be scheduled for a hearing at a time deemed appropriate by the Board. Further parole consideration will be necessary in this case.

MAXIMUM RELEASE DATE: 10-16-93

Respectfully submitted,

Peggy L. McClure
Peggy L. McClure
Institutional Parole Officer
Fulton Reception and Diagnostic Center

PLM/slr

DEPARTMENT OF CORRECTIONS
ADULT INSTITUTIONS
FACE SHEET

00000001-1
PAGE 1

REGISTER NO: 176948 COMMITMENT NAME: SPENCER RANDY G
DID NO: N000416629 TRUE NAME: SPENCER RANDY G
DOB: 498-62-6752 AGE AT COMMITMENT: 34
DOI NO: 77555MS

* * ALIAS NAMES * *

SPENCER	GLENN	1 SMOTHERS	RANDY
SPENCER	RANDY	1 SPENCER	RANDY
SPENCER	RANDY	1	

BIRTH DATE: 03 31 1956 BIRTH PLACE: BLOOMINGTON IL ETHNICITY: NON-HISPANIC
HEIGHT: 5 FT. 11 IN. WEIGHT: 175 SEX: MALE RACE: WHITE
BUILD: STOCKY HAIR: BLONDE/ EYES: GREEN COMPLEXION: FAIR

* * SCARS MARKS AND TATTOOS * *

CODE-1: TAT R ARM	DESCRIPTION-1: BOWLING BALL #1
2: TAT UR ARM	2: RANDY ON ROSE
3: TAT LF ARM	3: TIGER
4: TAT L WR	4: MOM, DAD, FLOWER
5: TAT R WR	5: TAMMY, STAR

RELIGIOUS PREFERENCE: BAPTIST MARITAL STATUS: NEVER MARRIED

* * EMERGENCY ADDRESS * *

NAME: SMOTHERS ROBERT RELATIONSHIP: STEP-FATHER
STREET/CITY/STATE/ZIP: 44-15 TERRA LINDA YRL WARRENSBURG MO 64093
TELEPHONE NUMBER: 816-429-1471

NAME: WILSON JUDY RELATIONSHIP: SISTER
STREET/CITY/STATE/ZIP: 706 DITHAN KANSAS CITY MO 64127
TELEPHONE NUMBER: 816-252-9382

* * MILITARY SERVICE * *

BRANCH: NEVER SERVED TYPE OF DISCHARGE: -DISCHARGE DATE: 00 00 0000

* * PRIOR RECORD * *

PROBATION / MO: 02 PAROLE / MO: 03 IMPRISONMENT / MO: 03 ESCAPE / MO: 00
OTHER: 00 OTHER: 00 OTHER: 00 OTHER: 00
PRIOR REGISTER NUMBERS:

167629 048909 032238

* * OCCUPATION OR TRADE * *

OCCUPATIONS: LABORER (GENERAL)

* * SENTENCE SUMMARY * *

RECEIVED DATE: 11 14 1990 RETURNED FROM: CREDIT TIME RELEASE DATE: 08 25 1992
NUMBER OF SENTENCES: 2 MAXIMUM AGGREGATE RELEASE DATE: 10 16 1993
TOTAL SENTENCES LENGTH: 3 TIME CREDIT RELEASE DATE:

* * COMMENTS * *

3 YRS (3.3CC)
PAROLED: 4-16-92; RET PV: 8-25-92.

REGISTRY NO: 176948

COMMITMENT NAME: SPENCER RANDY G

* * PRESENT CONVICTIONS * *

4000144

CAUSE NO: CR904834

CLASS: C OCN

MO CODE: 14020990 NCIC: 2349

PO: BURGLARY 2

SENTENCE DATE: 11 08 1990

LENGTH: 003 00 00

RECEIVED: 11 14 1990

JAIL: 0028

SENTENCE COUNTY: JACK

SENTENCE START DATE: 10 17 1990

RETURN: 09 25 1992 NON-CREDITED:

MAXIMUM RELEASE: 10 16 1993

MAX: 10 16 1993 DISC TYPE:

CC/CS: CC REL TO SEQ:

SENT STAT: ACTIVE

DISC DATE:

4000244

CAUSE NO: CR904834

CLASS: C OCN

MO CODE: 15010990 NCIC: 2359

PO: STEALING OVER \$150.00

SENTENCE DATE: 11 08 1990

LENGTH: 003 00 00

RECEIVED: 11 14 1990

JAIL: 0028

SENTENCE COUNTY: JACK

SENTENCE START DATE: 10 17 1990

RETURN: 08 25 1992 NON-CREDITED:

MAXIMUM RELEASE: 10 16 1993

MAX: 10 16 1993 DISC TYPE:

CC/CS: CC

REL TO SEQ: 001

SENT STAT: ACTIVE

DISC DATE:

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

STATE OF MISSOURI

PLAINTIFF

VS.

RECEIVED

NOV 14 1990

Randy G. Spencer

RECORDS OFFICE

Fulton DEPENDANT Diagnostic Center

JUDGMENT

(GUILTY PLEA - NO PROBATION)

On November 8, 1990, came the attorney for the State Robert Adams

and defendant appeared in person and by attorney, Kent Hall

It is adjudged that defendant, having been found guilty upon a plea of guilty entered on November 8, 1990, of the

offense(s) of Count 1 - Burglary 2°

Count 2 - Stealing over \$150.00

a class C felony/~~misdeam~~ is guilty of said offense(s).

It is ordered and adjudged that defendant is sentenced and committed to the custody of the Division of Adult Institutions/~~Jackson County~~

~~Department of Corrections~~ for imprisonment for a period of Three years each count to run concurrent

Acknowledgment read by the Court and signed by the defendant.

It is ordered that the Court Administrator deliver a certified copy of this judgment and commitment to the Jackson County Department of Corrections and that the copy serve as the commitment of defendant.

It is ordered and adjudged that the State of Missouri have and recover from defendant the sum of \$46.00 for the Crime Victims' Compensation Fund, and that execution issue therefor.

It is ordered and adjudged, pursuant to Chapter 600 R.S.Mo., that the State of Missouri have and recover from defendant the sum of \$ 50.00 for services of the Public Defender, and that execution issue therefor.

November 8, 1990

DATE

Crime Victims' Compensation

Fund unpaid.

D.C.A.

JUDGE

ORIGINAL

STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
BOARD OF PROBATION AND PAROLE

405 East 13th Street
5th Floor
Kansas City, MO 64106
(816)889-2271

VIOLATION REPORT

Name: SPENCER, RANDY G. No.: IN176948-P Date: 7/27/92
TYPE OF CASE TYPE OF REPORT
Board Initial
Crime: PG: Stealing O/S150; Burglary II Sentence: 3 years (3,3 cc)
Date Supv. Began: 04/16/92 Expires: 10/16/92

TYPE OF VIOLATION:
Felony (1)

OFFICER'S RECOMMENDATION:
Continuance (1)

VIOLATION INTERVIEW:
Date: 7/17/92 Time: 4:20 p.m. Place: Jackson County Jail
1300 Cherry, KCMO 64106

X Client Advised that Any Statements May be Included in Violation Report
X Client Given Booklet "Rights of Alleged Violator"
X Waived Preliminary Hearing Requested Preliminary Hearing
IN CUSTODY? X Yes Date: 7/17/92 Location: Jackson County Jail

I. Introduction

Violation of Parole Condition #1, by allegedly committing the offense of Rape.

Violation of Parole Condition #6, by the use of Cocaine.

Violation of Parole Condition #7, by use of a dangerous weapon.

II. Particulars of Violation

Spencer was arrested on a twenty-hour hold on a charge of Rape by Officers of the Kansas City, Missouri Police Department on 7/16/92, at an unknown time and unknown place, and subsequently held on the authority of a warrant issued by this officer dated 7/17/92.

Circumstances of the violation of Condition #1 are as follows: According to KCMO Police Department Report #92-077642, on 6/3/92, Spencer was introduced to the victim, Gina Bartlett, in a Kansas City Area Crack House, located near 24th and Park Streets, KCMO. After smoking crack, the victim was asked by Spencer for a ride home at approximately 6:00 p.m. The victim then gave Spencer a ride home and agreed to come upstairs, subsequent to his offer to give her gas money. After entering Spencer's apartment, Spencer and the victim smoked more crack, after which the victim attempted to leave the apartment. Spencer then allegedly jumped in front of her and pushed her to the floor. The victim stated that he got on top of her and started striking her in the face with his fists and told her to shut up. Allegedly, Spencer continued to punch her face until she begged him to stop and removed her clothes. Spencer then enjoyed sexual intercourse with the victim prior to his removing his penis in time

"The Jackson County Department of corrections hereby endorse upon this commitment that this person spent 29 days in jail.

Annette Jones
Criminal Records Unit

10-17-90 thru 11-14-90

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TRUE COPY - ATTEST
CIRCUIT COURT OF JACKSON COUNTY, MO
COURT ADMINISTRATOR'S OFFICE
DEPARTMENT OF CRIMINAL RECORDS
BY Sam [Signature] DIA

OCN/87057220

OFFENSE CYCLE NO.

VIOLATION REPORT

Name: SPENCER, Randy G.

No.: 1N176948-F

Date: 7/27/92

to ejaculate on the victim. Spencer then got dressed and told the victim to get dressed, after which he directed the victim to drive him back to the drug house in order to purchase more Cocaine. Upon arrival at the drug house, the victim exited the vehicle. The victim informed the persons at the drug house that she had just been raped by Spencer. Next, Spencer was chased away from the house by two of the male occupants and escaped. The victim entered the drug house, telephoned her parents, and was picked up at the house by her father and brother, prior to receiving treatment for the rape at Independence Regional Hospital. The attending physician's report at Independence Regional Hospital indicated that the victim was visibly upset, crying at times, and evidenced "bruises on the left side of mouth with moderate swelling, abrasion of inner-upper left lip, tender but not discolored on right angular jaw." Members of the KCPD were dispatched on the reported rape by hospital personnel. On 6/18/92, officers of the KCMO Police Department Sex Crimes Unit responded to an anonymous tip that the name of the rapist was Randy Spencer. An ALERT Systems check of Randy Spencer by police detective provided additional descriptive information as well as a mug shot of Spencer obtained from the Police Records Bureau. On 6/23/92, the victim identified Spencer as the rapist from a six-picture color photospread. After being detained for questioning regarding this offense on 7/16/92, Spencer told investigating detectives that "her purse was on top of my refrigerator, and I attempted to try to get to the dope and pushed her away.....she fell and landed on my bed." When asked by detectives whether or not he had hit the victim in the head with his hands, Spencer replied, "not intentionally, not with my knowledge, it may have happened when I pushed her away from the purse." However, Spencer claimed to investigating detectives that the two had engaged in consensual sexual intercourse.

This case was turned over on 7/17/92 from the KCMO Police Department Sex Crimes Unit to the Jackson County Prosecuting Attorney's Office. As of the date of this writing, no State charges have been formally filed.

In response to the above violation, Spencer had no response.

Circumstances of the violation of Condition #6 are as follows: According to the KCMO Police Department Report #92-077642, Spencer admitted to smoking Crack Cocaine, on 6/3/92.

In response to the above violation, Spencer admitted the violation.

Circumstances of the violation of Condition #7 are as follows: According to the above-mentioned KCPD Report #92-077642, the victim stated that Spencer had a screwdriver which he, "pressed" against her side, at some point during the alleged rape, but that she wasn't clear at what point that happened.

In response to the above violation, Spencer denied the violation.

III. Other Violations

None.

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Name: SPENCER, Randy

No.: 1N176948-F

Date: 7/27/92

Page 3

IV. Recommendation

This officer's recommendation is for Continuance and placement in Farmington Treatment Center/Mineral Area Treatment Center. Spencer has admitted to smoking Crack Cocaine within two weeks of being released from Fellowship House, on 5/21/92. Spencer received a violation report from Fellowship House staff, relative to using Cocaine on or about 4/2/92. Spencer has admitted before to the use of "anything I can get my hands on," relative to drugs. Yet, of greater concern to the undersigned officer than Spencer's cavalier attitude regarding drug use while on parole, is the fact that Spencer admitted to investigating detectives that he pushed the victim until she fell yet can't clearly recall whether he "intentionally" assaulted her, although "it may have happened." This officer contends that Spencer, regardless of the disposition of this new case, is obviously a violent and impulsive individual who represents a clear danger to the community. This officer contends that Spencer has every intention of continuing to use drugs whenever possible, despite what help is offered him. Randy Spencer is a registered sex offender, having been given a five-year prison sentence for Sodomy in 1983. However, an ultimate recommendation based on the alleged violations of Conditions #1 and #7 is being held in abeyance pending disposition of this new rape charge, by the Jackson County Prosecuting Attorney's Office. In the event formal charges are ultimately filed, a separate recommendation will be forthcoming. Meanwhile, in view of the alleged rape, it is deemed necessary to immediately remove Spencer from the community. The Prosecuting Attorney's Office has advised it will be a month or so before the case is reviewed for possible filing of charges. No objection was posed to returning Spencer as a parole violator in the interim.

V. Availability

Spencer is currently in the custody of the Jackson County Jail, 1300 Cherry, Kansas City, Missouri 64106, and is immediately available to the Board.

Respectfully submitted,

Jonathan L. Tintinger/04-07
State Probation & Parole Officer
Kansas City, MO
District #4

Mouton
Unit Supervisor

Date: _____

JLT/bar 08/06/92

SIGNATURE ON FILE
DRIVER ON FILE

62

19

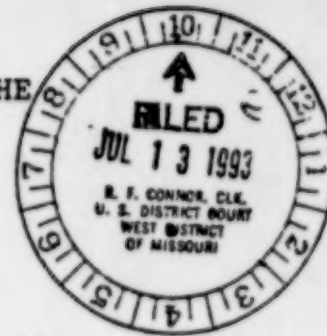
KJFP-181

VIOLATION REPORT

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

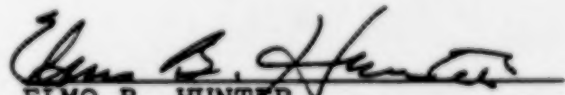
No. 93-0299-CV-W-3-P



ORDER

Upon motion of respondent, and for good cause shown, it is ORDERED that respondent is granted an enlargement of time up to and including July 7, 1993, in which to file a response to the petitioner's petition as directed by this Court's order to show cause.

IT IS SO ORDERED.


ELMO B. HUNTER
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri,

Dated: 7-13-93.

IN THE UNITED STATES DISTRICT COURT OF THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

RANDY G. SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

Case No. 93-0299-CV-W-3-P



PETITIONER'S MOTION AND REQUEST FOR
FINAL DISPOSITION OF THIS MATTER

Comes now, the petitioner, Randy G. Spencer, pro-se, and moves this court to make a final adjudication of this matter and in support of this request, this petitioner will state as follows:

1. That this petitioner is moving this court for a final adjudication of this matter, because this petitioner has been granted "good time" and this petitioner may be released from confinement, on August 7, 1993, and if a final disposition of this matter is not reached by August 7, 1993, then this petitioner will suffer irreparable harm, by being denied the rights and benefits which are secured to this petitioner by the United States Constitution, through the use of the Writ of Habeas Corpus, resulting in this petitioner being illegally confined and restrained from his liberty, for (13) months of this petitioners life, without due process of the law, and leaving this petitioner with no way to vindicate himself, during this time.

2. That if this petitioner is released from confinement on August 7, 1993 and if this matter is not adjudicated by then, then all of this petitioners time, money, and efforts, will have been for nothing, as this court knows that when this petitioner is released, and if the issues of this petitioners petition for Writ of Habeas Corpus are not resolved by then, then this petitioners petition and the issues thereof, become moot, as no relief can be granted to this petitioner, by way of the Writ, if this petitioner is no longer in confinement.

3. That this petitioner realizes that such a request is highly unusual, but under these circumstances, not entirely unreasonable, especially in light of the facts that when this petitioner was arrested and detained for alleged parole violation, this petitioner had (14) months left to serve on this petitioners sentence, and with it taking over two (2) months for this petitioner to even see the parole board, for revocation, another (6) six months exhausting State Judicial Remedies, (2) two months getting a show cause order issued in this case, and (2) two more months spent on the respondent requesting extensions of time, all of which has caused this petitioner to virtually serve out the remainder of his sentence, and leaving this petitioner unable to regain his freedom, by the use of the Writ.

4. That this court has the jurisdiction to invoke a final adjudication and judgement in this matter, through the Federal Rules of Civil Procedure, and pursuant to, in accordance with, but not limited to, Titles 28 U.S.C. §2241 et seq. (1993), §1331 Federal Question, § §2201-2202 Declaratory Judgement, or any other remedy that this court may have at its disposal.

5. That this petitioner believes that the respondents attorneys have known about this petitioners possible release, on August 7, 1993 and that the true reasons behind the respondents requests for extensions of time, was to vex this case as long as possible, all the while, waiting for this petitioner to be released from confinement, then to move this court for a dismissal of this case, on the grounds that no relief can be granted to this petitioner, by way of the Writ, because this petitioner would no longer be in confinement, making this petitioners case, moot.

6. That this courts order of May 13, 1993, and granting this petitioners claim, a liberal construction, under Haines vs. Kerner, 404 U.S. 519 (1972), this court has ascertained from this petitioners petition, that this petitioner was challenging the revocation of this petitioners parole and that this petitioner had listed the following grounds for relief:

(1) That this petitioner was denied the right to a preliminary hearing concerning alleged parole violations;

(2) That this petitioners conditional release date was suspended without a hearing;

(3) That this petitioners parole revocation hearing was constitutionally flawed and did not comport with the principles of due process; and

(4) That this petitioner was denied the opportunity to review the evidence relied on in revoking this petitioners parole.

7. That this petitioner will attempt to substantiate the grounds, listed herein, by way of this courts order on May 13, 1993, as the grounds for which this petitioner seeks relief and a final adjudication of this matter.

8. That on July 16, 1992, this petitioner was "picked up", not arrested, by the Kansas City Police Department, for the purpose of a (20) twenty hour investigation, into the allegation of the crime of rape.

9. That before the (20) twenty hour investigation was over, on July 17, 1992 this petitioners parole officer issued a warrant for this petitioners arrest, for parole violation, and, this petitioner was taken to the Jackson County Jail, in Kansas City, Missouri. Please see exhibit A.

10. That also on July 17, 1992 this petitioners parole officer conducted an interview with this petitioner and this petitioners parole officer handed this petitioner a copy of the warrant for arrest and detention of this petitioner, a copy of the rules and regulations of the Missouri Department of Probation and Parole, in a handbooklet entitled, "Rights of Alleged Parole Violator to Preliminary and Revocation Hearing", and, at the ill-advice of this petitioners parole officer, who stated that he had probable cause to violate this petitioner and that "this is only a formality", he asked this petitioner to sign a waiver to a preliminary hearing on the (2) two alleged violations of the conditions of this petitioners parole, which were shown on the warrant for arrest and detention of this petitioner, and this petitioner was given a copy of this signed waiver as well. Please see exhibits A and B.

11. That after this petitioner had signed the waiver, exhibit "B", and was able to read and comprehend what this petitioners rights actually were, at a preliminary hearing, even under the rules and regulations of the Missouri Department of Probation & Parole, did this petitioner realize that he should not have

signed the waiver of his right to a preliminary hearing, on the (2) two alleged parole violations, that were on the warrant for arrest and detention of this petitioner.

12. That on approximately August 7, 1993, while this petitioner was still in the custody of the Jackson County Jail, this petitioner's parole officer brought this petitioner a copy of the violation report, prepared by this petitioner's parole officer, and as this petitioner had read this violation report, this petitioner noticed that this petitioner was ^{now} being violated for (3) three violations of the conditions of this petitioner's parole, and not just the (2) two that were on the warrant for arrest and detention of this petitioner. Please see exhibit C and compare to exhibit A.

13. That this petitioner "did not sign a waiver" of his rights to a preliminary hearing and the rights secured therein, on this third alleged violation of the conditions of this petitioner's parole, and for this petitioner to be brought back to prison and violated (revoked) on this third alleged violation of this petitioner's parole, without first affording this petitioner with a preliminary hearing, and the rights secured therein, was to have violated this petitioner's rights under the 5th and 14th Amendments to the Constitution, to not be deprived of "liberty" without Due Process of Law, and even the Supreme Court Justice BRENNAN has stated:

"I agree that a parole may not be revoked, consistently with Due Process Clause, unless the parolee is afforded, first, a preliminary hearing"

Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2593, 2605 (1972) and Gagnon v Scapelli, 411 U.S. 773, 93 S.Ct. 1756 (1973), however, this petitioner's parole was revoked, without first affording this petitioner with a preliminary hearing on the third alleged violation of the conditions of this petitioner's parole.

14. That by not affording this petitioner with a preliminary hearing and the rights secured therein, on the third alleged violation of the conditions of this petitioner's parole, as stated on the violation report, (exhibit C), this petitioner was denied his right and ability to defend himself, to present witnesses and documented evidence, the right to confront and cross-examine any

adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), and disclosure of the evidence against this petitioner, all of which might have been used and asserted by this petitioner, to prove that there might not have been probable cause to take this petitioner back to prison.

15. That also by not affording this petitioner with a preliminary hearing and the rights secured therein, on the third alleged violation of the conditions of this petitioner's parole, this petitioner was prejudiced, in that if this petitioner was afforded a preliminary hearing and the rights secured therein, on the third alleged violation of the conditions of this petitioner's parole, then this petitioner might have been able to shed enough light to have cleared himself on the third alleged violation, and this petitioner, as well, might have been able to clear himself on the first (2) two alleged violations of the conditions of this petitioner's parole, which had caused this petitioner to be arrested and detained, as all three (3) alleged violations of the conditions of this petitioner's parole, were related, and to have cleared this petitioner self on one alleged violation, was to have possibly cleared this petitioner self, on all three (3) alleged violations of the conditions of this petitioner's parole.

16. That this petitioner remained in the custody of the Jackson County Jail, in Kansas City, Missouri, until August 25, 1992, when this petitioner was transported back to the Missouri Department of Corrections, at the Fulton Reception & Diagnostic Center, (F.R.D.C.), in Fulton, Missouri.

17. That while this petitioner was detained at the F.R.D.C., on September 14, 1992, this petitioner was interviewed by an institutional parole officer, a Peggy McClure.

18. That at this interview, on September 14, 1992, Peggy McClure handed this petitioner a copy of the warrant for arrest and return of this petitioner, a copy of the scheduling notice for this petitioner's revocation hearing, and a copy of the form in which this petitioner had requested a revocation hearing on. Please see exhibits D, E, and F.

19. That also at this interview, on September 14, 1992, Peggy McClure informed this petitioner that it was this petitioners responsibility to contact witnesses and to secure counsel, for this petitioners revocation hearing, on September 24, 1992, and that she was authorized to offer this petitioner (1) one stamp and a phone call, for this petitioner to contact witnesses and to secure counsel with, and further, that this petitioner was being brought in front of the board, for violation of Laws, Drugs, and the possession of a dangerous Weapon, all of which this petitioner denied.

20. That on September 20, 1992, this petitioner wrote the institutional records office, at F.R.D.C., to find out if this petitioner had any holds, warrants or detainers, placed against this petitioner. Please see exhibit G.

21. That this petitioner was reading in his handbooklet, entitled "Rights of Alleged Violator To Preliminary and Revocation Hearing", issued under the authority of the Missouri Department of Probation and Parole, and on pages 8 & 9, of this booklet, this petitioner noticed, among other things, that this petitioner had been given the right to have a representative of "this petitioners choice", at this petitioners revocation hearing, on September 24, 1992, and that such choices may include, family members, friends, employers and legal counsel. Please see exhibit H.

22. That also on September 20, 1992, this petitioner, being faced with very little time and virtually no money, had wrote the institutional parole officer, Peggy McClure, and this petitioner requested that this petitioner be allowed to have an inmate para-legal, a David Graham, at F.R.D.C., to be present and this petitioners legal counsel, at this petitioners revocation hearing, on September 24, 1992. Please see exhibit I, with the original being on file with the Supreme Court for the State of Missouri, under case number, 75670.

23. That on September 21, 1992, this petitioners note, exhibit I, was returned to this petitioner, with this petitioners request being denied. Please see exhibit I.

24. That although the State of Missouri has not incorporated into its legislation, the rights of a parolee at and in a revocation hearing, according to Missouri Practice, volume 19, section

551, this petitioner did have the right to a representative, of this petitioners "choice", at this petitioners revocation hearing, on September 24, 1992, and apparently this is endorsed, along with other rights, by the Supreme Court in, Black v Ramano, U.S. 105, S.Ct. 2254, 85 L.Ed.2d 636 (1985); see also, Abel v Wyrick, 574 S.W.2d 411 (Mo. banc 1978).

25. That even under the rules and regulations of the Missouri Department of Probation & Parole, exhibit H, this petitioner had a liberty interest involved, in this petitioner having a representative of this petitioners "choice", at this petitioners revocation hearing of September 24, 1992, and courts have held that a "liberty interest" could be found in state statutes, judicial decrees, or by rules and regulations; see, Kozlowski v Coughlin, 539 F. Supp. 852 (S.D.N.Y. 1982); Parker v Cook, 642 F.2d 865 (1981); and, Dugliese v Nelson, 617 F.2d 916 (1980). Please see exhibit H.

26. That also, when this petitioner requested a representative of this petitioners "choice", this petitioner chose to be represented by an inmate para-legal, at F.R.D.C., to represent this petitioner at this petitioners revocation hearing, on September 24, 1992, but when this petitioners request was denied, in essence, this petitioner was denied the right to legal counsel, at this petitioners revocation hearing, as the requirements of due process are the same for probation and parole revocation hearings, see, Baker v Wainwright, 527 F.2d 372 (1976), and the requirement of due process is,

"... counsel should be provided for indigents on probation or parole cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request . . ."

Gagnon v Scapelli, 411 U.S. 778, 93 S.Ct. 1756, 1760 n. 5 (1973).

27. That this petitioner is not claiming as a ground for relief, that this petitioner was denied his right to be informed of the right to request counsel, although this surely should be considered, but when this petitioner was told that it was this petitioners "responsibility" to secure counsel, for this petitioners revocation hearing, and with this petitioner having virtually no money, when this petitioner wrote the note requesting that an in-

mate para-legal, c F.R.D.C., be allowed to present this petitioner, at this petitioners revocation hearing, if the State of Missouri was not going to provide this petitioner with legal representation, then this petitioner should not have been denied the right to have a representative of this petitioners choice, but with this petitioner not being informed of his right to request counsel, and that counsel might be provided for this petitioner, if this petitioner was indigent and denied the allegations, along with this petitioner not being allowed to have a representative of this petitioners "choice", choice being an inmate para-legal, then this petitioners minimum due process rights, as described in either Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972), or Gagnon v Scaprelli, 411 U.S. 778, 93 S.Ct. 1756 (1973), were violated and denied to this petitioner.

28. That if nothing else, when this petitioner wrote the note (exhibit I), to Peggy McClure, at F.R.D.C., an inquiry should have been held to determine if legal counsel, should have been appointed for this petitioner, by the Missouri Department of Probation & Parole, but it wasn't.

29. That on September 24, 1992, this petitioners revocation hearing, went as scheduled, without informing this petitioner of his right to confront and cross-examine witness, and by not informing this petitioner of his right to confront and cross-examine witnesses, this petitioners due process rights, may have been violated. See, Lawrence v Smith, 541 F.Supp. 179-187 (W.D.N.Y. 1978). This petitioner is not claiming this as a ground for relief, but surely this should be considered.

30. That this petitioners revocation hearing, on September 24, 1992, was centered around this petitioner being questioned about the allegation of rape against this petitioner, with this petitioner consistently challenging and denying the accuracy of the violation report, and one parole board member started the hearing off, by stating, I see here that the violation report says that you (meaning this petitioner) have been arrested and charged with the crime of rape, and immediately this petitioner spoke up and stated that this petitioner had not been charged with the crime of rape and this petitioner handed the board member, exhibit G, to show that even some (70) days later, this petitioner

had still not been charged with the crime of rape, or any other crime, since this petitioner had been put on parole.

31. That even with the knowledge that this petitioner had not been charged with the crime of rape, this one parole board member continued to question this petitioner about the allegation, with this petitioner continuing to deny it.

32. That this one parole board member stated that the violation report states that this petitioner had used a weapon (screwdriver) against the alleged victim, and this petitioner pointed out that on page two (2) of the violation report, that the report stated that the alleged victim wasn't "clear" as to what point the weapon "might" have even been used, clearly putting doubt on the accuracy of the alleged victims statement and the violation report or if this petitioner even used a weapon, at all, against anyone.

33. That this one parole board member started showing signs of irritation and stated that the violation report states that this petitioner had admitted to using drugs, but this petitioner denied this allegation.

34. That this one parole board member really got irritated at the proceeding of this petitioners revocation hearing, and slamming his hands on the table, this one parole board member had stated, you mean that you are not going to admit to these violations, and this petitioner said no, as the violation report was untrue and the allegations against this petitioner are wrong and that this petitioner should not be getting violated.

35. This petitioners revocation hearing, on September 24, 1992, was ended, but this petitioner was never told "why" there were no adverse witnesses present and against this petitioner at this petitioners revocation hearing, but for the purpose of this court, the hearsay violation report, exhibit C, clearly states that this petitioner was at the K.C.P.D, on July 16, 1992, on a "twenty hour hold", and that the alleged violations, #1, LAWS, and, #7, WEAPONS, were being held in abeyance, but the Missouri Department of Probation & Parole revoked this petitioners parole, on all three alleged violation, even though this petitioner had not violated any laws or been found to be in possession of any dangerous weapons. Please see exhibit N.

36. That for the purposes of this court,) this date, this petitioner has not been arrested and/or convicted of any crime, nor has this petitioner been found to be in possession or tested positive, of any drugs, since this petitioner was placed on parole, on April 16, 1992, nor has this petitioner been found to be in possession of any type of a dangerous weapon, nor has this petitioner been found to be in use of or admitting to the use of drugs, since this petitioner was placed on parole, on April 16, 1992 and the Missouri Department of Probation & Parole should not have revoked this petitioners parole, on September 24, 1992, for violating the conditions of this petitioners parole, as described on exhibits F & N, and according to Mo. Rev. Stat. section 217.720;

"If no violation is established and found, then the parole or conditional release shall continue. . ."

37. That a violation of the conditions of this petitioners parole, was not established or found on violations #1. Laws & #7. Weapons, and the only violation of the conditions of this petitioners parole that "might" have been established, was the alleged use of drugs, and that is only because the violation report, hearsey, stated that this petitioner had admitted to using drugs, which this petitioner did not.

38. That ". . . the first step of revocation decision involves retrospect factual question whether parolee had in fact violated one or more conditions of his parole. Only if it is determined that the parolee did violate the conditions does the second question arise: should the parolee be recommitted to prison or should other steps be taken to protect society and improve chances of rehabilitation."

Gagnon v Scaprelli, at 784, 93 S.Ct., at 1760, quoting Morrissey 408 U.S., at 479-80, 92 S.Ct., 2593.

39. That the spirit of those decessions require that the Missouri Department of Probation & Parole, must find that this petitioner "had in fact violated one or more of the conditions of " this petitioners parole, and, that once the violation has been

"established", (Mo. Rev. Stat. 217.720), by "varified facts", Morrissey, supra, Key 272, should this petitioner be recommitted to prison or should other steps be taken to improve chances of rehabilitation for this petitioner?

40. That this petitioners parole officer had seen fit to commend "Continuance" of this petitioners parole, (page 3 of exhibit C), but the Missouri Department of Probation & Parole decided to revoke this petitioners parole, without "varified facts", and to recommitte this petitioner to prison without even attempting to improve this petitioners chances of rehabilitation, completely distroying the spirits of both Gagnon & Morrissey, supras.

41. That this petitioner believes that a large part of the parole boards prejudice against this petitioner, was due to the fact that this petitioners parole office had stated in the violation report, (page 3 of exhibit C), that this petitioner was a registered sex offender, and with this petitioner being questioned about the alligation of rape, the parole board conclusively presumed this petitioner to be guilty, and revoked this petitioners parole.

42. That the Supreme Court in Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972), Constitutional Law, Key 272, has stated:

"What is required by due process for parole revocation is informal hearing structure to assure that finding of parole violation will be based on varified facts . . . U.S.C.A.14; and the District Court for the Southern District of New York has clearly stated;

"At parole revocation hearing, burden is on the state to show violation of conditions of parole by preponderance of evidence, . . . "

Johnson v Kelsh, 664 F.Supp. 162 (S.D.N.Y. 1987).

43. That this petitioners parole was not revoked on "varified facts" or by a "preponderance of the evidence", but rather, this petitioners parole was revoked on unsupported hearsey evidence, which violated this petitioners rights under the 5th, 6th and 14 th Amendments to the Constitution of the United States.

44. That for the purposes of this court, this petitioner is relying heavily on the decession in State Ex Rel. Mack v Purkett,

825 S.W.2d 851 (Mo.banc 1992), and, IN RE CARSON, 789 S.W.2d 495 (Mo.App.1990), where both of those courts held that the petitioners in those cases, were denied their minimum due process rights, by not being allowed to confront and cross-examine adverse witnesses, and the Supreme Court for the State of Missouri, in Purkett, supra, page 854, emphasised:

"The court concluded by not being able to confront and cross-examine the person who provided the evidence, the petitioners due process rights where violated. 789 S.W.2d 497".

45. That not only was this petitioner not allowed to confront and cross-examine this petitioners parole officer, at this petitioners revocation hearing, on September 24, 1992, but this petitioner was "never" told "why" there were no adverse witnesses at this petitioners revocation hearing, and the Supreme Court for the state of Missouri has stated, in Purket, supra, page 857:

". . . the clear requirment of Morrissey (is) that the hearing officer specifically find good cause for not allowing confratation. Undoubtedly, that requirment must be meet as a precondition to considering purely hearsey statements of persons not subject to confratation . . ."

and for the parole board to not imform this petitioner, at the begining of this petitioners revocation hearing, "why" there were no adverse witnesses at this petitioners revocation hearing, on September 24, 1992, was to deny this petitioner of his minimum due process rights, as described in either, Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972), and, Gagnon v Scaprelli, 411 U.S. 778, 93 S.Ct. 1756 (1973).

46. That this petitioner was prejudiced, by not being allowed to confront and cross-examine this petitioners parole officer, at this petitioners revocation hearing, on September 24, 1992, in that if this petitioner was able to cross-examine this petitioners parole officer at this petitioners revocation hearing, then this petitioner could have shown that this petitioners parole officers violation report, exhibit C, was inaccerate and untrue, but without this petitioner being allowed to cross-examine this petit-

ioners parole officer, at this petitioners revocation hearing, on September 24, 1992, the parole board took this petitioners parole officers report, exhibit C, as absolute truth, and this petitioners parole, "liberty", was revoked. Please see exhibit N.

47. That in dealing with the parole boards decission to rely "soley" on the violation report, exhibit C, as the basis for revoking this petitioners parole, the Alabama Criminal Appeals Court has held:

"But where the only evidence at a revocation hearing was a parole violation report that consisted of information that had in turn been obtained from police reports, the violation reports where held not to have sufficient indicia of reliability. Hill v State, 350 So.2d 716-18

(Ala.Crim.App.1977)", cited from Mack v Purkett, 825 S.W.2d 851, 856 (Mo.banc 1992).

48. That in violating this petitioners parole, the parole board, should not have held the violation report, exhibit C, as having indicia of reliability, as it was unsupported, hearsey, bias, and clearly prejudicial against this petitioner, further, with the Missouri Supreme Court, in Purkett, supra, articulating the use of hearsey evidence, against a parolees right to confront and cross-examine adverse witnesses, through the Missouri Attorney Generals Office, the parole board knew, or should have known, that by revoking this petitioners parole, based "soly" on an unsuported violation report, was to deny this petitioner of his minimum due process rights, as mandated in Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2604 (1972), through the decessions that were handed down in Mack v Purkett, 825 S.W.2d 851 (Mo.banc1992), and, IN RE CARSON, 789 S.W.2d 495 (Mo.App.1990), but the parole board revoked this petitioners parole, anyways.

49. That for the Missouri Department of Probation & Parole, to revoke this petitioners parole, based "soley" on an unsupported violation report, was to revoke this petitioners parole on hearsey evidence, and to deny this petitioner his rights, under the confratation clause, of the 6th Amendment to the Constitution of the United States of America, as the Missouri Court of Appeals has clearly stated:

"Petitioners complaint that he was denied the right to confrontation and cross-examination is well founded. Petitioner was entitled to confront and cross-examine the person who provided the evidence which resulted in his loss of liberty. By not being afforded that opportunity, petitioner was denied the minimum rights of due process to which he was entitled."

IN RE CARSON, 789 S.W.2d 495, 497 (Mo.App.1990).

50. That this petitioners revocation hearing, on September 24, 1992, was not unlike the revocations, in either Mack v Perrett, 825 S.W.2d 851 (Mo. banc 1992) or IN RE CARSON, 789 S.W.2d 495 (Mo.App.1990), where the courts in both those cases adjudicated that the petitioners were denied their minimum due process rights, because they were not allowed to confront and cross-examine any adverse witnesses, at their revocation hearings, and with this petitioner not being told why there were no adverse witnesses, and this petitioner not being allowed to confront and cross-examine this petitioners parole officer, at this petitioners revocation hearing, on September 24, 1992, then this court should adjudicate that this petitioners minimum due process rights were denied to this petitioner as well.

51. That,

"... fundamental liberty is valuable and its termination inflicts a grievous loss on the parolee, (and) the court concluded in Morrissey that the decision to revoke parole must be made in conformity with due process standards. 408 U.S., at 482, 92 S.Ct., at 2600" cited from Gagnon v Scaprelli, 411 U.S. 778, 93 S.Ct. 1756 (1973).

52. That by not affording this petitioner with his minimum due process rights, at this petitioners revocation hearing, on September 24, 1992, as mandated in either Morrissey or Scaprelli, *supra*, and then revoking this petitioners parole, based "solely" on unsupported hearsay evidence, the parole board caused this petitioner to suffer a grievous loss of his "liberty", without due

process of law, in violation of this petitioners federally protected rights, under the 5th, 6th, and 14th Amendments to the Constitution of the United States.

53. That not only was this petitioner denied his minimum due process rights, at this petitioners revocation hearing, on September 24, 1992, but this petitioner was not even provided with a written statement by the factfinders,

"as to the evidence relied on and the reasons for revoking parole."

Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2593, 2604 (1972).

54. That even under the rules and regulations of the Missouri Department of Probation & Parole, in this petitioners handbooklet, entitled, "Rights of Alleged Violator to Preliminary and Revocation Hearing", on page (10), of exhibit J, it states:

"After the revocation hearing, the Parole Board will supply the alleged violator with a written notice within ten (10) working days setting out their decision. This notice will be sent within ten (10) working days from the time the decision was made." Please see exhibit J, page 10.

55. That this petitioners exhibits K, L, and M, will show this court, that this petitioner did not receive within (20) working days, or even one-hundred and twenty (120) days, a decision from the parole board as to the evidence relied on and the reasons for revoking this petitioners parole, in fact, it took this petitioner the grievance procedure of the Missouri Department of Corrections, and, one-hundred and twenty-one days (121), for this petitioner to receive a written statement from the parole board, as to evidence relied on in revoking this petitioners parole, but to this date, this petitioner has not received a written statement from the parole board, as to the reasons for revoking this petitioners parole. Please see exhibits M & N, which this petitioner received on or after January 23, 1993; four months and one day, after this petitioners revocation hearing, on September 24, 1992.

56. That the minimum due process requirements of Morrissey or Gagnon, *supra*, clearly require that this petitioner to be provided, with "a written statement from the factfinders as to the

evidence relied on and reasons for revoking it. Id., Morrissey, supra, page 2604, and without this petitioner being provided with a written statement from the parole board, of the reasons for revoking this petitioners parole, this petitioners minimum due process rights were violated, under the standards as mandated in both Morrissey, and, Scaprelli, supras, and further:

"There is no place in our system of law for reaching a result of such tremendous consequences without ceremony — without hearing, without effective assistance of counsel, without a statement of reasons. Kent v United States, 383 U.S. 541, 554, 86 S.Ct. 1045, 1053, 16 L.Ed.2d 84 (1966):"

cited from Morrissey v Brewer, 408 U.S. 495, 92 S.Ct. 2593, 2608 (1972).

57. That the spirit of Morrissey, supra, page 2604, is that the entire parole revocation process, should be completed in about two (2) months, as the Supreme Court in Morrissey, supra, has stated:

"A lapse of two months, . . . would not appear to be unreasonable"

however, from the date in which this petitioner was arrested for alleged parole violation, July 17, 1992, until this petitioner had "finally" recieved a written statement from the parole board, was well over six months, and any time over the two (2) months period, as suggested in Morrissey, supra, should be held to be unreasonable, and in this petitioners situation, a denial of this petitioners minimum due process rights, and esspicailly so, sence this petitioner has still not recieved a written statement from the parole board, for the reasons for revoking this patitioners parole.

58. That without this petitioner recieving a written statement from the parole board, concerning this petitioners revocation hearing, and before this petitioners conditional release date of October 16, 1992, this petitioner "thought" that he still retained his mandate conditional release date, on October 16, 1992, however, what this petitioner found out was, was that this petitioner had lost his conditional release date of October 16, 1992, when this petitioner was brought back to prison and labeled a parole violator.

59. That pursuant with court order and Mi ssouri Laws, this petitioner was sentenced to the Missouri Department of Corrections, on November 8, 1990, for the term of two, 3,3, year sentences, to run concurrently, and with this petitioner being granted jail time, this petitioners sentence start date, was October 17, 1990.

60. That according to Mo. Rev. Stat., 1992, Volume 3, section 558.011:

1. The authorized terms of imprisonment, including both prison and conditional release terms, are:
4. (1) A sentence of imprisonment for a term of years shall consist of a prison term and a conditional release term. The conditional release term of any term imposed under section 557.036, R.S.Mo., shall be:

(a) One-third for terms of nine years or less;

61. That this petitioner was sentenced to the Missouri Department of Corrections, for a sentence of three years, and according to Mo. Rev. Stat. 558.011, and for this petitioner to serve one-third of his sentence on conditional release, this petitioner would have had to been released from prison, on October 16, 1992, to serve one-third of this petitioners sentence on conditional release, until this petitioners maximum release date of October 16, 1993.

62. That also according to Mo. Rev. Stat., section 558.11, this petitioners conditional release date of October 16, 1992, could be extended up to this petitioners maximum release date of October 16, 1993, by the board of probation and parole, however, before the board could extend this petitioners conditional release date, under subsection 5, of Mo.Rev. Stat. 558.011, the board must be petitioned :

Within ten working days of reciept of the petition to extend the conditional release date, the board of probation and parole shall conviene a hearing on the petition. The offender shall be present and may call witnesses in his behalf and cross-examine witnesses appearing against him. . .

63. That this petitioners exhibits J and O will show that under the policies and practices of the Missouri Department of Pro-

bation and Parole, that when an offender is brought back as a parole violator, the inmate is not eligible for conditional release date", and, that this policie of the Missouri Department of Probation and Parole is enforced by the Missouri Department of Corrections, as exhibit O, clearly shows that when an offender is brought back to prison, "C R date is automatically removed". Please see exhibits J, page 11, and exhibit O.

64. That the respondent will surely argue that this petitioners conditional release date of October 16, 1992, was not taken from this petitioner, until after this petitioner had been revoked by the parole board and pursuant with Mo. Rev. Stat. 558.031, subsection 5, which states:

"If a person released from imprisonment on parole or serving a conditional release term violates any of the conditions of his parole or release, he may be treated as a parole violator under the privisions of section 217.720, RSMo. If the board of probation and parole revokes the parole or conditional release, the paroled person shall serve the remainder of his prison term . . ."

65. That this petitioners exhibits J and O have shown this court, that the policies and practices of the Missouri Department of Probation and Parole, enforced by the Missouri Department of Corrections, is quite differant than what is required in Mo. Rev. Stat. 558.031, subsection 5, as Mo. Rev. Stat. 558.031, subsection 5, calls for an offender to be seen by the parole board and that his release be reviewed, pursuant with section 217.720, R.S. Mo., which requires a hearing in conformity with due process, but exhibits J and O clearly show that an offenders conditional release date is taken from that offender, when the offender is brought back to prison and labeled a parole violator, without any type of a hearing or due process of law. Please see exhibits J and O.

66. That this petitioners P, is an institutional face sheet on this petitioner, and in the upper left hand corner, it shows that this petitioners face sheet was "updated" on September 23, 1992, by the Missouri Department of Corrections, one (1) day

before this petitioner was seen by the parole board for parole revocation, so the respondents argument that this petitioners conditional release date of October 16, 1992, had not been taken from this petitioner until "after" this petitioners parole had been revoked by the parole board, and, pursuant with Mo. Rev. Stat. 558.031, 5, is moot, as this petitioner was not seen by the parole board for parole revocation, until September 24, 1992. Please see upper left hand corner of exhibit P, and compare the date, to this petitioners actual revocation hearing, on exhibit D.

67. That this petitioners exhibit Q, is an institutional face sheet, for an inmate that was released from confinement, and as this court will notice, that this inmates institutional face sheet, includes among other things, that inmates conditional release date, pursuant with Mo. Rev. Stat. 558.011, 1, 4, (a), and clearly showing that conditional release dates are included on institutional face sheets, however, this petitioners institutional face sheet, does not show a conditional release date, at least one (1) day before this petitioner had seen the parole board for revocation, and this petitioners exhibit R, is another institutional face sheet on this petitioner, which was updated after this petitioner had seen the parole board, and in both face sheets, there is no mention of a conditional release date. Please see exhibits P and R, before and after revocation.

68. That both Mo. Rev. Stats. 558.011 and 558.031 require and mandate, that some form of a hearing is to be conducted, before this petitioners conditional release date, of October 16, 1992, could have been taken from this petitioner, however, this petitioner has submitted to this court, three (3) exhibits, that show under the policies and practices of both the Missouri Department of Probation and Parole, and, the Missouri Department of Corrections, that without a hearing or due process of law, when an offender is "brought back as a parole violator", his conditional release date, is "automatically removed", and for the two departments to conduct such policied and parctices, is nothing less then a direct violation of both Mo. Rev. Stats. 558.011 and 558.031.

69. That this petitioners conditional release date, of October 16, 1992, was taken from this petitioner, in compliance

with the unlawful policies and practices of both the Missouri Department of Probation and Parole, and, the Missouri Department of Corrections, "before" this petitioner was seen and his parole revoked, by the parole board, without a hearing or due process of law, and in direct violation of this petitioners rights under the 5th and 14th Amendments to the Constitution of the United States.

70. That under the exhaustion doctrine, the respondent will surely argue that this petitioner has not exhausted "all" available administrative and judicial remedies, that where available to this petitioner, before this petitioner sought relief in the Federal Court, by way of the Writ of Habeas Corpus, however, this can easily be resolved.

71. That this petitioners exhibits K and L, will show this court, that under the policies and practices of the Missouri Department of Corrections, that this petitioner is not able to address any issues, concerning the Missouri Department of Probation and Parole, in the grievance procedure of the Missouri Department of Corrections, and as such, administrative remedies are exhausted. Please see the responses on exhibits K and L.

72. That this petitioner has brought his grounds for relief, as stated in this petitioners petition, and herein, to the Circuit Court of Dekalb County, Maysville, Mo. by way of the Writ of Habeas Corpus, under case no. CV592-126CC, and, in a one-sided hearing, without this petitioner or counsel for this petitioner being present, or allowing this petitioner to reply or respond to the respondents response to the courts show cause order, the Circuit Court of Dekalb County, denied this petitioners petition for Writ of Habeas Corpus.

73. That this petitioner then went to the Missouri Court of Appeals, by way of a petition for Writ of Review, Requesting a Writ of Certiorari, case number, 47416, while describing the grounds of relief, as stated in this petitioners petition and herein, because of the one-sided way in which the Circuit Court of Dekalb County, had denied this petitioners his rights under Missouri Rules of Court, as described in paragraph 72, herein, while denying this petitioners petition for Writ of Habeas Corpus, and although the Missouri Court of Appeals had requested from the

respondent to respond to this petitioners petition, on the day after the respondent had filed his response to this petitioners petition, the Missouri Appeals Court, denied this petitioners petition, without affording this petitioner with the opportunity, to file a reply, response, amendment or supplemental pleading, to the respondents response.

74. That this petitioner then went to the Missouri Supreme Court, case number 75670, by way of the Writ of Habeas Corpus, while describing the ground for relief, in this petitioners petition and herein, but again, this petitioners petition for a Writ of Habeas Corpus was denied, without a show cause order being issued, or, even a reason from the court, as to "why" this petitioner petition had been denied, however, courts have held that the:

exhaustion requirement satisfied when State Supreme Court denied state habeas petition without comment, see, Lewis v Borg, 879 F.2d 697 (9th Cir. 1989); see also, Justices of Boston Municipal Courts v Lydon, 466 U.S. 294, 302-03 (1984); and further:

"Complete exhaustion of State remedies prior to bringing habeas corpus petition was exhausted by special circumstances, including petitioner's continual good-faith effort to bring his petition before proper form and states officials' failure to take any action to rectify petitioners predicament."see, Chitwood v Dowd, 889 F.2d 781 (8th Cir. 1989).

75. That in fact, this petitioner had filed a complaint under 42 U.S.C. § 1983, asserting the grounds as stated herein, and although this petitioner specifically stated that he was not seeking release, as a form of relief, the Honorable William A. Knox, of the central division, asserted that this petitioner must seek relief in the form of a Writ of Habeas Corpus; case number, 92-4554-CV-C-5, and with all being considered, this petitioner has exhausted administrative and judicial remedies, in a good-faith effort.

76. That this court has the jurisdiction through the Federal Rules of Civil Procedure, to ~~TREAT~~ this petitioners

petition for Writ of Habeas Corpus or this Motion and Request for Final Disposition of this Matter, under the Federal Rules of Civil Procedure, as a Motion For Summary Judgement, a Judge on the Merits, a Judgement on the Pleadings, and possibly a statement of claim, for the purposes of a complaint under 42. U.S.C. § 1983, or any other applicable civil rule that this court can use to best serve justice and this petitioners interests, and although this petitioner might be released on August 7, 1993, for the purpose of a final adjudication in this matter, courts have held:

custody requirement satisfied when prisoner released on parole after habeas petition

filed. see, Gordon v Duran, 895 F.2d 610-612 (9th Cir. 1990); see also, Jones v Cunningham, 371 U.S. 236, 243 (1963); Kolocotronis v Holcomb, 925 F.2d 278, 279-80 (8th Cir. 1991).

77. That this court granted the respondents second request for an extension of time, up to and including July 7, 1993, however, this petitioner did not receive the respondents response, until five (5) days after the deadline date of this courts order, and that was on, July 12, 1993.

78. That the respondents have submitted into evidence, respondents exhibits 9, 10, and 11, that this petitioner has never seen or had knowledge of, until this date, July 12, 1993.

79. That the respondents exhibits 9, 10, and 11, is a revocation report, that was filed out and submitted to the parole board, by the institutional parole officer, Peggy McClure, for the purpose of the parole board to review in their final decision to revoke this petitioners parole.

80. That the Revocation Report, respondents exhibits 9, 10, and 11, is a Revocation Report, that is based on this petitioners parole officers initial violation report, petitioners exhibit C, and considering that the respondents exhibits 9, 10, and 11, is a Revocation Report, based solely on another report, respondents exhibits 9, 10, and 11, is entirely hearsay evidence that was presented to the parole board, on September 24, 1992, without this petitioners knowledge of such.

81. That under the minimum due process requirements in Morrissey v Brewer, 408 U.S. 471, 489, 92 S.Ct. 2593, 2604, (1972), this petitioner has a right to the "disclosure" of "evidence against" this petitioner, and, a right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), however, respondents exhibits 9, 10, and 11, was evidence that was submitted to the parole board. At this petitioners revocation hearing, on September 24, 1992, but this petitioner was not informed, nor was respondents exhibits 9, 10, and 11, disclosed to this petitioner, at this petitioners revocation hearing to this date, July 12, 1993, this petitioner has not known of the existence of respondents exhibits 9, 10, and 11, and with the parole board reviewing respondents exhibits 9, 10, and 11, prior to revoking this petitioners parole, without disclosing this evidence to this petitioner for rebuttal, this petitioner was denied his minimum due process rights, under Morrissey, supra.

82. That on page 2 of respondents exhibit 10, Peggy McClure had stated that this petitioner had admitted to her, that this petitioner had in fact, used cocaine and advised to her, that this petitioner stated, "so what"; this is pure fabrication, as this petitioner did not admit to Peggy McClure that he had used any type of a drug, let alone cocaine, and, without this petitioner being allowed to confront and cross-examine Peggy McClure, at this petitioners revocation hearing, on September 24, 1992, this petitioner was denied his right to confrontation and cross examining Peggy McClure, to rebut any fabrication that Peggy McClure had submitted to the parole board, and further, Peggy McClure was at F.R.D.C., on the date of this petitioners parole revocation, but this petitioner

was not told by the hearing officer, "why" Peggy McClure was not at this petitioner's revocation hearing, on September 24, 1992, and as such, this petitioner was denied his minimum due process rights, under Morrissey, supra.

83. That this petitioner does not want to bring any new grounds up, but with the receipt of the respondents response to this court's show cause order, this is the first time that this petitioner has had "any" knowledge of respondents exhibits 9, 10, and, 11, and, this petitioner is requesting that respondents exhibits 9, 10, and, 11, to be suppressed from the evidence, through the Federal Rules of Civil Procedure, as being hearsay, fabricated and admitted at this petitioner's parole revocation hearing, on September 24, 1992, without this petitioner's knowledge and in violation of this petitioner's minimum due process rights.

84. That in response to the respondents Statement as to Merits, on page (5) of the respondents response, the respondent is asserting that because this petitioner had signed a waiver of his right to a preliminary hearing on the (2) alleged violations of the conditions of this petitioner's parole, in petitioner's exhibits A and B, that by signing this waiver, this petitioner had made an "admission as to two bases for the arrest", which had, "certainly constitutes probable cause for a more detailed parole revocation proceeding". Please see and interpret respondents response, page 4 and 5.

85. That it is absurd for the respondent to assert that because this petitioner had signed a waiver, that the waiver constitutes an admission of guilt by this petitioner.

86. That for the purposes of a final adjudication of this matter, if this court grants this petitioner's petition for Writ of Habeas Corpus and this motion, a liberal construction, see Wallace v Lockhart,

701 F.2d 719, 727 (8th Cir.), cert. denied, 464 U.S. 934 (1983), that if this court finds that this petitioner has asserted new grounds for relief, or has presented different theories that would be totally unexceptionable for a pro-se litigant, then this petitioner requests that this court, in the best interest of this petitioner, to dismiss such grounds or theories, but hopefully not to totally disregard them, as this petitioner does not know what he is doing or if it is applicable or not applicable, and further, this petitioner is requesting an immediate evidentiary hearing, so the issues won't become moot.

WHEREFORE, this petitioner prays that this court will take this petitioner's best interest to heart, when adjudicating the matters of this motion and/or this petitioner's petition for Writ of Habeas Corpus, that if appropriate, to order an evidentiary hearing and/or to appoint this petitioner with legal counsel, for any possible and/or further proceedings in this matter.

Respectfully Submitted by

Randy G. Spencer
Randy G. Spencer, #176948
Western Mo. Corr. Center,
P.O. Box 1-E, (6-0-150)
Cameron, Mo. 64429

Certificate of Service

I hereby certify, that a copy of this petitioner's exhibits, attached hereto, and, the foregoing, was mailed, postage prepaid, this 13th day of July, 1993, to:

Ronald L. Jergeson, Assistant Attorney General, Pentamer
Office Center, 3100 Broadway, Suite 609, Kansas City, Mo. 64111

Randy G. Spencer
Randy G. Spencer PRO-SE

Exhibit A



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
BOARD OF PROBATION AND PAROLE
WARRANT

<input type="checkbox"/> ENTER
JUDGE
DOCKET NO.
<input type="checkbox"/> ABSCONDER <input checked="" type="checkbox"/> NEW OFFENSE <input checked="" type="checkbox"/> TECHNICAL
TITLE

NAME	NUMBER
TO OR ANY OTHER PEACE OFFICER OF THE STATE OF MISSOURI ALLEGED VIOLATION OF PROBATION/PAROLE/CONDITIONAL RELEASE/HOUSE ARREST	
NAME SPENCER, Randy G.	NUMBER IN176948

VIOLATIONS:

Violation of Parole Condition #1, by allegedly committing the crime of Rape.

Violation of Parole Condition #6, by alleged possession and use of crack cocaine.

COPY

AUTHORITY

UNDER THE AUTHORITY GRANTED THE BOARD OF PROBATION AND PAROLE OF THE STATE OF MISSOURI AND ITS PROBATION AND PAROLE OFFICER BY SECTIONS 217.720 RSMo, 217.722 RSMo AND BY ORDER OF THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, YOU ARE HEREBY REQUESTED TO ARREST THE ABOVE NAMED INDIVIDUAL AND HOLD HIM/HER SUBJECT TO THE ORDER OF THE COURT HAVING JURISDICTION IN THIS CASE, THE STATE BOARD OF PROBATION AND PAROLE, OR ITS OFFICER ISSUING THIS WARRANT.

MONTH/DAY/YEAR WARRANT ISSUED July 17, 1992		OFFICER NAME AND CODE (TYPE) Jonathan Tintinger 04-07	
OFFICE ADDRESS 405 E. 13th St. 5th Fl., Kansas City, Missouri 64106		SIGNATURE OF PROBATION AND PAROLE OFFICER <i>Jonathan Tintinger</i>	
SEX Male	RACE White	BIRTH DATE 3-31-56	AGE 36
PLACE OF BIRTH Bloomington, IL.		HEIGHT 5'11"	WEIGHT 180
BUILD Stocky		IDENTIFYING MARKS Tattoo on right arm- bowling ball; Upper right arm Randy on a rose	
LAST KNOWN ADDRESS 104 So. Kensington, Kansas City, Missouri		LAST KNOWN EMPLOYER All Seasons Car Wash, 8320 Wornall, K. C. MO.	
S.S. NUMBER 498-62-6752		FBI NUMBER 7758945	
P.D. NUMBER Alert # 0014239		OFFENSE Burglary II; Stealing Over \$150.00	

WARRANT TO RETURN	
COUNTY WARRANT SERVED	DAY/MONTH YEAR WARRANT SERVED
COUNTY/CITY JAIL WHERE ARRESTEE BEING HELD	NAME OF ARRESTEE
SIGNATURE OF SHERIFF/CHIEF OF POLICE	DAY/MONTH/YEAR AVAILABLE FOR TRANSPORTATION
BY	89

DO NOT ENTER INTO MULES OR NCIC



DEPARTMENT OF CORRECTIONS
REQUEST FOR PRELIMINARY HEARING

INMATE NAME SPENCER, Randy	REGISTER NUMBER IN176948	DATE 7-17-92
I have received a copy of the "Right of Appeal" and fully understand my right to a preliminary hearing. I hereby <input type="checkbox"/> REQUEST <input checked="" type="checkbox"/> WAIVE a preliminary hearing.		

SIGNED <i>Randy Spencer</i>	DATE 7-17-92
WITNESSED BY <i>Jonathan Tintinger</i>	

NOTICE OF PRELIMINARY HEARING	
THIS IS TO INFORM YOU, THAT AT YOUR REGULAR HEARING WILL BE HELD	DATE
TIME	LOCATION
THE HEARING OFFICER WILL BE	NAME
	TITLE

The purpose of this hearing is to determine if probable cause or reasonable grounds exist to refer your case to the Missouri Board of Probation and Parole or to the Court. This Preliminary hearing is NOT a revocation hearing.

The charges brought against you consist of the following violations of the condition(s) of your parole, probation, or conditional release:

Based on information and evidence placed before him, the Hearing Officer will determine if probable cause exists for your case to be referred to the authority having jurisdiction.	PROBATION PAROLE OFFICER
ELIGIBLE FOR BOND	PROBATION PAROLE OFFICER/HEARING OFFICER

MO 831-0012 (4-90)

REGISTER NO: 176948

COMMITMENT NAME: SPENCER RANDY G

* * PRESENT CONVICTIONS * *

001
CAUSE NO: CR904834 CLASS: C OCN: MO CODE: 14020990 NCIC: 2299
PG: BURGLARY 2
SENTENCE DATE: 11 08 1990 LENGTH: 003 00 00
SENTENCE COUNTY: JACK RECEIVED: 11 14 1990 JAIL: 0028
SENTENCE START DATE: 10 17 1990 RETURN: 08 25 1992 NON-CREDITED:
MAXIMUM RELEASE: 10 16 1993 MAX: 10 16 1993 DISC TYPE:
CC/CS: REL TO SEQ: SENT STAT: ACTIVE DISC DATE:

002
CAUSE NO: CR904834 CLASS: C OCN: MO CODE: 15010990 NCIC: 2399
PG: STEALING OVER \$150.00
SENTENCE DATE: 11 08 1990 LENGTH: 003 00 00
SENTENCE COUNTY: JACK RECEIVED: 11 14 1990 JAIL: 0028
SENTENCE START DATE: 10 17 1990 RETURN: 08 25 1992 NON-CREDITED:
MAXIMUM RELEASE: 10 16 1993 MAX: 10 16 1993 DISC TYPE:
CC/CS: CC REL TO SEQ: 001 SENT STAT: ACTIVE DISC DATE:

Exhibit

The Board Does not allow another inmate to appear as legal counsel. - Right of Audiotape

My name is Randy Spencer #176948 and I am to appear before the board on 9-24-92 and I would like to inmate David Graham (past-legal) here at this institution to be present and my legal counsel at my hearing. Please acknowledge receipt of this. Thank you. P.S. Do you know if I have been charged with a crime.

MAIL RECEIVED

SEP 21 1992

INST. PAROLE OFFICE
FRDC

*Sincerely
Randy Spencer*

Exhibit K

STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
INFORMAL RESOLUTION REQUEST

LOG NUMBER

DATE

12-01-92-08

11-25-92

REGISTER NUMBER

80-247(B)

INMATE NAME
Randy Spencer

COMPLAINT: STATE YOUR PROBLEM BRIEFLY.

I seen the parole board for revocation over (60) days ago and I haven't received an answer yet! My parole board handbook, page 10, says "the parole board will supply the alleged violator with a written notice within (10) working days setting out their decision. This notice will be sent within ten (10) working days from the time the decision was made."

I have a right to an answer, regarding the decision, of my revocation hearing. I also have been very patient in waiting for a response. However, the board and/or its staff are violating their own rules and policies, in that I was not given an answer, within the (20) day time limit, as prescribed in my booklet.

Mr Baker, the institutional parole officer, asked me to wait (60) sixty days that is why I've waited so long! But I'm tired of waiting, I deserve an answer. I HAVE A RIGHT TO AN ANSWER.

ACTION REQUESTED: STATE REMEDIES YOU ARE SEEKING.

I want a rush effort put into this and I'd like my answer, by the parole board, as to their decision and the evidence or facts relied on.

STAFF USE ONLY

FINDINGS:

Your complaint is regarding Probation and Parole. This is a non-grievable issue. You are advised to read and follow IS8-2.1.

RECOMMENDATIONS/RESPONSE

IRR is denied.

INVESTIGATOR'S SIGNATURE

Oran Ann Johnson

DATE

12/10/92

RESPONDENT'S SIGNATURE

C. J. Price

DATE

12/10/92

IN VIEW OF SIGNATURE

Dennis S. L...

INMATE SIGNATURE

Randy Spencer

☐ SATISFACTORY☒ UNSATISFACTORY

93

DATE

12-15-92

Exhibit M

84

STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES
BOARD OF PROBATION AND PAROLE

Date: 01/22/93

INMATE COPY

SPENCER, Randy
176948
WMCC

I. RELATING TO RELEASE CONSIDERATION

1. You have been scheduled for a parole hearing
2. You have been given parole consideration in a parole hearing
3. You have been scheduled for release from confinement. Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:
 _____ Guideline _____ Below Guideline _____ Above Guideline

The reasons for the action taken are:

II. RELATING TO PAROLE/CONDITIONAL RELEASE VIOLATION

Following your violation hearing on 09/24/92, or your waiver of violation hearing, signed by you on / / .

- XXX 1. You have been revoked. Your copy of the Order of revocation is attached.
- XXX 2. A total of _____ days will not be counted as time served on your sentence, in accordance with Board decision pursuant to state law. Your New Maximum Release date will be .

You have been scheduled for release from confinement on your Maximum Release date of 10/16/1993.

dlt

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



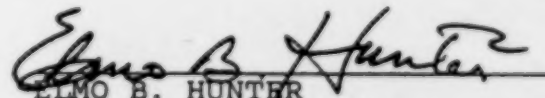
RANDY SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

Case No. 93-0299-CV-W-3-P

ORDER

It is ORDERED that:

- (1) petitioner file a reply to respondent's answer, filed July 7, 1993, within thirty (30) days from the date of this Order;
- (2) petitioner's failure to do so will result in the dismissal of this case without further notice; and
- (3) the Clerk of the Court send petitioner a copy of this Order by regular and certified mail, return receipt requested.


ELMO B. HUNTER
SENIOR DISTRICT JUDGE

Kansas City, Missouri,

Dated: 7-15-93.

NOTICE !!! NOTICE !!! NOTICE !!! NOTICE !!! NOTICE !!! NOTICE !!!

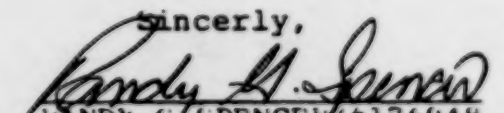
To the Office of the Clerk,
United States District Court
Western District of Missouri
Writ Division,
811 Grand Avenue
Kansas City, Missouri

RE: RANDY G. SPENCER vs. MIKE KEMNA, Case No. 93-0299-CV-W-3-P

That the Court issued an Order, date July 15, 1993 where this petitioner was granted and given (30) days to respond to the respondents answer to the Courts Show Cause Order.

This petitioner is urgently requesting that your office inform the Court that this petitioner has already filed his response and that if the Court waits until the (30) day time limit is up, then this petitioner will be denied his rights through a Writ of Habeas Corpus, as by the time the (30) day time limit of this Courts Order of July 15, 1993 is up, this petitioner will be released and out of prison, therefore, it is absolutely imperative that the Court be informed of this change in this petitioners situation and that he has already filed a response to the respondents answer to the Courts Show Cause Order.

Your time and cooperation in this matter will be greatly appreciated.

Sincerely,

RANDY G. SPENCER #176948
WESTERN MO. CORR. CTR.
K.K. 5. BOX 1-E
CAMERON, MISSOURI
64429

July 22nd, 1993

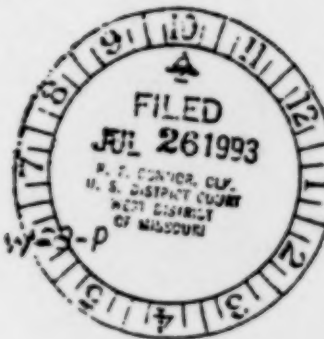
IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KANDY G. SPENCER,
Petitioner,

vs.

MIKE KEMNA,
Respondent.

Case No. 93-0299-CV-W-3-P



PETITIONERS SUPPLEMENTAL RESPONSE TO THIS PETITIONERS
MOTION AND REQUEST FOR FINAL DISPOSITION OF THIS MATTER

Comes now, the petitioner, Kandy G. Spencer, pro-se, and in response to this Courts Order of July 15, 1993, this petitioner will state as follows:

1. That on July 15, 1993 this Court gave this petitioner (30) days in which to respond to the respondents answer.
2. That this (30) day time limit is unnecessary, as this petitioner has already filed his response to the respondents answer, by certified mail, exhibit A, with a copy being mailed to this court, on July 13, 1993.
3. That this petitioner would like to supplement his already filed response to the respondents answer, by stating that the respondent, in his answer, page number 8, has admitted that there where no live (adverse) witnesses at this petitioners parole revocation hearing, on September 24, 1992.

THEREFORE, this petitioner prays that this Honorable Court will supplant this pleading into this petitioners already filed response to the respondents answer to this Courts Show Cause Order and that this Honorable Court will protect this petitioners rights and the eyes of justice, by adjudicating this matter as quickly as possible, thereby adjudicating a final disposition of this matter.

97

Document # 17
Randy G. Spencer

Office of the Clerk
Aug 13, 1993

RE: Randy G. Spencer v Mike Kemna
Case No. 93-0299-CV-W-3-P



It is to inform you that I have had a change of address. My new mailing address is:

Randy G. Spencer
c/o Robert & Linda Smothers
Lot A-15
Terra Linda Trailer Park
Warrensburg, Mo. 64093

Certificate of Service

I hereby Certify that a copy of the foregoing was mailed, postage pre paid, this 13th day of Aug. 1993, to.

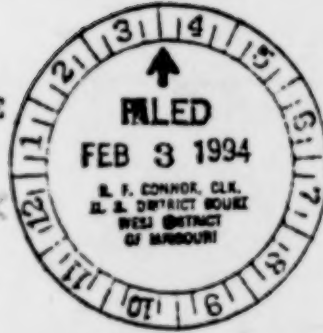
Ronald L. Tergeson, Asst. Attorney Gen. Pentair Office Center,
3100 Broadway, Suite 609, Kansas City, Mo.

Randy G. Spencer
Randy G. Spencer / pro se

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Document # 19

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

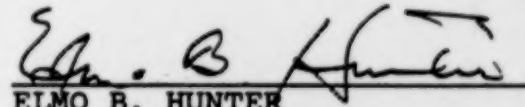


RANDY SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

Case No. 93-0299-CV-W-3-P

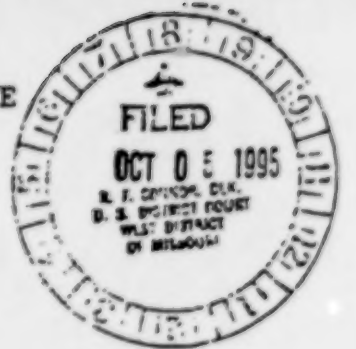
O R D E R

It is ORDERED that petitioner's motion for final disposition (Doc. No. 15) is noted. The resolution of this case will not be delayed beyond the requirements of this Court's docket. See United States v. Samples, 897 F.2d 193, 195 (5th Cir. 1990).


ELMO B. HUNTER
SENIOR DISTRICT JUDGE

Kansas City, Missouri,
Dated: 2-3-94.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



RANDY SPENCER,
Petitioner,
vs.
MIKE KEMNA,
Respondent.

Case No. 93-0299-CV-W-3-P

ORDER DENYING PETITIONER'S MOTIONS FOR LEAVE TO PROCEED ON APPEAL
IN FORMA PAUPERIS AND FOR A CERTIFICATE OF PROBABLE CAUSE

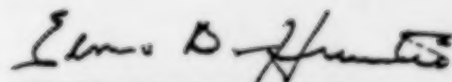
On August 23, 1995, the court dismissed this habeas corpus case because petitioner is no longer in custody pursuant to the challenged convictions. On September 5, 1995, petitioner filed a notice of appeal and motions for leave to proceed on appeal in forma pauperis and for a certificate of probable cause.

Pursuant to 28 U.S.C. § 1915(a), "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." If the issues sought to be presented are plainly frivolous, the appeal is not taken in good faith. Blackmun, In Forma Pauperis Appeals, 43 F.R.D. 343 (1967).

Furthermore, pursuant to 28 U.S.C. § 2253, "[a]n appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding [unless the judge] issues a certificate of probable cause." A certificate of probable cause will be issued only when substantial questions of law deserving of appellate review are presented. See, e.g., Barefoot v. Estelle, 463 U.S. 880 (1983); Clements v. Wainwright, 648 F.2d 979 (5th Cir. 1981);

Alexander v. Harris, 595 F.2d 87 (2d Cir. 1979).

Because this case presents issues which are not deserving of appellate review, it is ORDERED that petitioner's motions for leave to proceed on appeal in forma pauperis and for a certificate of probable cause are denied.


ELMO B. HUNTER
SENIOR DISTRICT JUDGE

Kansas City, Missouri,

Dated: 10-5-95.

FILED

AUG 9 1995

MICHAEL GANS
CLERK OF COURT

No. 95-3629

In The United States Court of Appeals
For the Eighth Circuit

Randy G. Spencer

Appellant

v.

Mike Kemna, et al.

Appellees

Appeal from the United States District Court
for the Western District of Missouri

The Honorable Elmo B. Hunter, Judge

Appellant's Petition for Rehearing, With Suggestions
for Rehearing En Banc

David G. Bandre'
Missouri Bar No. 44812
Inglis & Monaco, P.C.
237 East High Street
Jefferson City, MO 65101
Attorney for Appellant

PETITION FOR REHEARING

COMES NOW Appellant, by and through his appointed counsel, David G. Bandre', pursuant to Rules 35(a) and 40(a) of the Eighth Circuit Rules of Appellate Procedure and hereby moves this Court to set aside its August 2, 1996, opinion affirming the District Court's dismissal of Appellant's 28 U.S.C. Section 2254 Petition as Moot. Further, Appellant requests that the Court grant a rehearing thereof, or rehearing en banc because the decision is contrary to prior decision of the Court, because of procedural errors evident in the Court's August 2, 1996, opinion, and because this case presents a question of exceptional importance.

The undersigned counsel expresses a belief, based on a reasoned and studied professional judgment, that the decision is contrary to the decision of the Eighth Circuit Court of Appeals in Leonard v. Nix, 55 F.3d 370 (8th Cir. 1995), and that consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court.

Further, the undersigned counsel expresses a belief, based on a reasoned and studied professional judgment, that this appeal raises the following questions of exceptional importance:

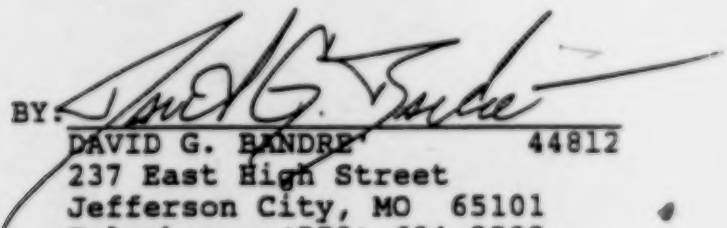
1. Is it the panel's opinion that Appellant's return to custody is irrelevant as to the future consequences of his alleged parole violation which was ruled upon at a Constitutionally flawed parole revocation hearing?

2. Should the three (3) member panel of the United States Court of Appeals for the Eighth Circuit which heard counsel's argument in this matter on May 17, 1996, base their opinion on

only two of the three issues raised by Appellant in his Brief and Reply Brief submitted to this Court in rendering their decision on August 2, 1996, when a ruling on that third issue would result in a different outcome?

3. Did the panel misinterpret Appellant's application of the Public Interest Exception to the mootness doctrine?

INGLISH & MONACO, P.C.

BY: 
DAVID G. BANDRE 44812
237 East High Street
Jefferson City, MO 65101
Telephone: (573) 634-2522
ATTORNEYS FOR APPELLANT

SUGGESTIONS IN SUPPORT OF APPELLANT'S PETITION
FOR REHEARING EN BANC

Randy G. Spencer's parole was revoked following a parole revocation hearing on September 24, 1992. In response to this revocation, Appellant filed an Application for Habeas Corpus Relief under 28 U.S.C. Section 2254 on April 1, 1993. Appellant actively pursued this request for Habeas Corpus Relief and made numerous attempts to have his pleas heard by the United States District Court prior to his release from incarceration. Despite Appellant's best efforts, delays from Appellees lead to his release from incarceration prior to his Petition for Habeas Corpus relief being heard. On August 23, 1995, United States District Court Judge Elmo B. Hunter of the Western District of Missouri, Western Division, dismissed Appellant's case because the sentences at issue had expired and because Petitioner was no longer "in custody" within the meaning of 28 U.S.C. Section 2254(a). On August 2, 1996, a panel of justices of the United States Court of Appeals for the Eighth Circuit issued its opinion, affirming the District Court's dismissal of Appellant's Petition as Moot. In its opinion, the panel failed to comment upon or base any portion of its ruling upon one of Appellant's three major issues raised in his Brief to the panel.

Further, the panel found that there was no "reasonable likelihood that Spencer will again be effected by the Board's parole revocation procedures." The panel further stated that "Assuming that Spencer is paroled from his present incarceration, we will not assume that he will violate his parole terms in order

to again undergo revocation proceedings." This statement by the Court goes against the Court's holding in Leonard v. Nix, 55 F.3d 370 (8th Cir. 1995), and the United States Supreme Court's, statements in Honig v. Doe, 484 U.S. 305 (1988), and mistates the argument raised by Appellant in both his Brief and Oral Argument.

Further, the panel deals with the "capable of repetition yet evading review" exception to the mootness doctrine in its opinion, yet this standard is not the exception offered by Appellant in his Brief or Oral Argument. In fact, Appellant expressly stated in his Reply Brief filed March 27, 1996, that he did not rely on this standard, rather placing support in the public interest exception to the mootness doctrine.

1. Is it the panel's opinion that Appellant's return to custody is irrelevant as to the future consequences of his alleged parole violation which was ruled upon at a constitutionally flawed parole revocation hearing?

The panel decision erroneously states that Appellant's collateral consequences are too speculative to overcome a finding of mootness. In Leonard v. Nix, 55 F.3d 370 (8th Cir. 1995) the Court stated that "Leonard's return to custody dispenses with any doubts that remain about the existence of collateral consequences in this case. Upon his return to ISP, Leonard's inmate status is marked by the previous rules violation, and if he commits any further infractions, he faces more severe treatment because of this prior disciplinary action. Accordingly, Leonard's Petition for a Writ Habeas Corpus is not moot, and we deny the Motion to Dismiss on this ground." In the case at bar, Spencer is

similarly marked by his previous parole revocation, a revocation which should not appear on his record due to the unconstitutional actions that took place at the parole revocation hearing. The panel, in its opinion goes so far as to state that, unlike a criminal conviction, no civil disabilities result from a parole violation finding. See Lane v. Williams, 455 U.S. 624, 632 (1982). Even if it is true that civil disabilities do not result from a parole violation finding, which Appellant denies, disabilities within the penal system certainly do exist. Merely because Appellant is an incarcerated person does not mean that he should be subjected to disabilities based upon a flawed parole revocation finding.

The Honorable Justice Beaney, in his concurring opinion went so far as to state that "It seems clear that Spencer may suffer collateral consequences as a result of the revocation of his parole." To conclude otherwise would be to turn a blind eye to Appellant's legitimate claims for relief.

2. Should the three member panel of the United States Court of Appeals for the Eighth Circuit which heard counsel's argument in this matter on May 17, 1996, base their opinion on only two of the three issues raised by Appellant in his Brief and Reply Brief submitted to this Court in rendering their decision on August 2, 1996, when ruling on that third issue would result in a different outcome?

In Appellant's Brief to the Court filed February 8, 1996, Reply Brief filed March 27, 1996, and in Oral Arguments on May 17, 1996, Appellant stressed the contention that his case only

became moot due to the actions of Appellee and the District Court. Those statements made by Appellant in his Brief, Reply Brief and Oral Argument stressed the injustice of these delays which was best summed up by the Supreme Court of the United States in Sibron v. State of New York, 392 U.S. 40, 20 L.Ed.2d 917, 88th S. Ct. (1968) in stating "We do not believe that the Constitution contemplates that people deprived of constitutional rights at this level should be left utterly remediless and defenseless against repetitions of unconstitutional conduct. . . a state may not effectively deny a convict access to its Appellate Courts until he has been released and then argued that his case has been mooted by its failure to do what it alone prevented him from doing." Id. at 53.

Failure of this Court to review the issue of undue delays resulting in Appellant's Petition for Habeous Corpus relief becoming moot, would clearly be an error.

3. Did the panel misinterpret Appellant's application to the public interest exception to the mootness doctrine?

In its order and opinion filed August 2, 1996, the panel states on pages 6 and 7 that "To be excepted from the mootness doctrine, the matter must be 'capable of repetition yet evading review' and there must be 'a reasonable expectation that the complaining party would be subjected to the same action again.'" Lane, 455 U.S. at 633-34.

While the statement made by the Court is, in and of itself, a true statement, it does not accurately reflect the arguments of Appellants set forth in their Brief, Reply Brief and Oral

Argument.

This issue, after being similarly misinterpreted by Appellee in their Brief to the Court submitted March 7, 1996, was dealt with in Appellant's Reply Brief on page 4, in which Appellant stated that "Even a cursory glance of Appellant's Brief filed February 8, 1996, reveals that Appellant never asserted use of the capable of repetition yet evading review exception. Rather, Appellant relies upon the public interest exception to the mootness doctrine (See Appellant's Brief at page 21-33), which is both directly on point in the case at hand and fully applicable to these facts." See Reply Brief of Appellant at page 4.

Under the public interest exception to the mootness doctrine, Appellant does not have to show a "reasonable likelihood" that he will be affected by the Board's unconstitutional parole revocation procedures in the future. Rather, he need show that an issue is likely to recur though not necessarily to the same individual; that an application of the mootness doctrine can repeatedly frustrate review, and that the issue is one of great public importance. Taylor v. Greenstreet, Inc., 743 P.2d 345 and Junkins v. Branstead, 421 N.W.2d 130. These items have been continually showed by Appellant throughout his attempts to have his Petition for Habeous Corpus relief be declared not moot.

Further, Appellant has established that the controversy, in fact, is capable of repetition and has established that it is reasonably likely that he will be affected by the unconstitutional practices of the parole revocation board

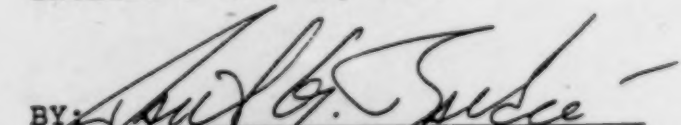
throughout his attempts to gain further parole. The Supreme Court of the United States in Honig v. Doe, 108 S.Ct. 592, 484 U.S. 305, 318 (1988) stated that "Our concern in these cases, as in all others involving potentially moot claims, with whether the controversy was capable of repetition and not . . . whether the claimant had demonstrated that a recurrence of the dispute was more probable than not." Id. at 602, fn 6, (emphasis in original).

The state of the law remains today that the public interest exception to the mootness doctrine is applicable to Appellant and renders his Petition for Habeous Corpus relief not moot.

CONCLUSION

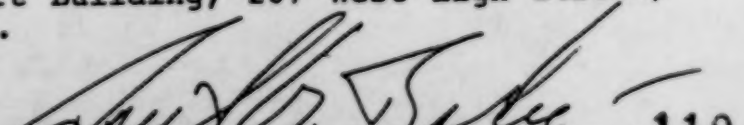
Appellant Randy G. Spencer respectfully requests that Rehearing or Rehearing En Banc be granted and that the panel's opinion of August 2, 1996, be vacated.

INGLISH & MONACO, P.C.

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ATTORNEYS FOR APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was mailed postage prepaid this 27th day of August, 1996, to Michael J. Spillane and Cassandra K. Dolgin, Attorney General's Office, Supreme Court Building, 207 West High Street, Jefferson City, Missouri 65101.


David G. Bandre 110
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